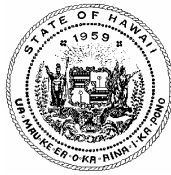


NEIL ABERCROMBIE
GOVERNOR



BARBARA A. KRIEG
DIRECTOR

LEILA A. KAGAWA
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
235 S. BERETANIA STREET
HONOLULU, HAWAII 96813-2437

April 3, 2013

TESTIMONY TO THE
SENATE COMMITTEE ON WAYS AND MEANS

For Hearing on Thursday, April 4, 2013
9:00 a.m., Conference Room 211

BY

BARBARA A. KRIEG
DIRECTOR

**House Bill No. 152, H.D. 1, S.D. 2 proposed
Relating to Workers' Compensation Medical Fee Schedules**

TO CHAIRPERSON DAVID IGE AND MEMBERS OF THE COMMITTEE:

Thank you for the opportunity to provide testimony on H.B. 152, H.D. 1, S.D. 2 proposed.

The purpose of H.B. 152, H.D. 1, S.D. 2 proposed, is to require the auditor to conduct a study on various aspects of the workers' compensation medical fee schedules and system in the State, including the sufficiency of current rates to provide access to the State's physicians that are willing to serve workers' compensation patients and fiscal impacts of increasing fee schedules.

The Department of Human Resources Development (DHRD) has a fiduciary duty to administer the State's self-insured workers' compensation program and its expenditure of public funds. **In that regard, DHRD supports Section 1, subsections (1), (2), (3) and (6) of this bill but has specific concerns with Section 1, subsections (4) and (5).**

First, we support Section 1, subsections (1), (2), (3) and (6), because we believe a comprehensive study of the current workers' compensation medical fee schedule—

giving consideration to the medical needs of claimants, appropriate compensation to physicians, and fiscal concerns of employers—is a fiscally responsible alternative to an across-the-board increase in the fee schedule. A full study of the fee schedule will help to ensure that any recommended increase in the future is supported by empirical data and addresses our shared concern with the Department of Labor and Industrial Relations (DLIR) that health care providers who are already adequately compensated for their services would receive an increase in allowable charges if the ceiling for charges were simply raised to 130% of Medicare. Also, while the workers' compensation law authorizes the DLIR Director to conduct the study, we are not opposed to the auditor conducting same in light of the DLIR's staffing limitations.

Second, specific to Section 1, subsection (4), this provision appears to presume that there are improprieties in non-Director ordered involved independent medical examinations (IMEs). However, as we have repeatedly testified, most recently in opposition to H.B. 437, H.D. 1 (which would have required IMEs for workers' compensation claims be performed by physicians mutually agreed upon by employers and employees), IMEs are absolutely critical for containing our workers' compensation claims costs because: 1) IMEs allow an employer, such as the State, its very fundamental right to conduct its discovery, using physicians of its choice, to evaluate whether the employer is liable for a claim or medical treatment; 2) an IME physician, as selected by the employer which is paying for the examination, provides an alternative medical opinion and serves as a check and balance to the claimant's attending physician when objective evidence indicates that the current treatment regimen may be unnecessary, unreasonable, or even harmful to the employee; and 3) IMEs allow employers to challenge ongoing disability and medical treatment, propounded by the claimant's physician, when the medical evidence indicates the claimant has reached medical stability and could possibly return to work. As a matter of due process, it is our practice to forward copies of IME reports to the claimant's physician for review, comment, and possible rebuttal. Also, as an added safeguard for injured workers, the DLIR, through its workers' compensation hearings officers, ultimately has the authority

to discredit any IME report which it believes is contrary to the facts and/or medical evidence in a contested claim.

Third, specific to section 1, subsection (5), the workers' compensation statute already has a built-in provision to guard against abuses of the law. Section 386-98, HRS, deems the following as fraudulent insurance acts which can be prosecuted criminally and administratively: acts or omissions committed by any person who intentionally or knowingly acts or omits to act so as to obtain benefits, deny benefits, obtain benefits compensation for services provided, or provides legal assistance or counsel to obtain benefits or recovery through fraud or deceit by doing any of several acts described in the statute.

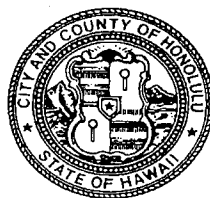
Thank you for the opportunity to testify on this measure.

DEPARTMENT OF HUMAN RESOURCES
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET 10TH FLOOR • HONOLULU, HAWAII 96813
TELEPHONE: (808) 768-8500 • FAX: (808) 768-5563 • INTERNET: www.honolulu.gov/hr

LATE

KIRK CALDWELL
MAYOR



CAROLEE C. KUBO
DIRECTOR

NOEL T. ONO
ASSISTANT DIRECTOR

April 4, 2013

The Honorable David Y. Ige, Chair
and Members of the
Committee on Ways and Means
State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Ige and Members of the Committee:

Subject: House Bill No. 152, HD1, SD1, Proposed SD2,
Relating to Workers' Compensation Medical Fee Schedules

House Bill No. 152, HD 1, SD1, Proposed SD2, would require the auditor to conduct a study relating to the workers' compensation fee schedule, including an evaluation to determine whether current rates are sufficient to provide workers' compensation patients with access to physicians. The City and County of Honolulu, Department of Human Resources, ("DHR") appreciates the committee's efforts to effectuate a study regarding the sufficiency of current workers' compensation medical reimbursements and offers the following comments with respect to the proposal.

DHR agrees that the sufficiency of the current medical fee schedule should be reviewed. In our testimony with respect to House Bill No. 152, HD 1, SD1, we similarly suggest that a task group of stakeholders be convened to identify the specific areas and services where workers' compensation reimbursements in Hawaii are causing providers to not accept workers' compensation patients. We feel either of these two approaches is more prudent and fiscally more responsible than the proffered alternative of providing an indiscriminate and unwarranted 18% across the board increase in the medical fee schedule.

We note the current proposal requires the auditor to conduct a study on a wide range of unrelated workers' compensation matters. We have concerns regarding whether the auditor will be able to comprehensively review the critical issue of current medical reimbursement rates given the breadth of the investigation the auditor is being

The Honorable David Y. Ige, Chair
and Members of the
Committee on Ways and Means
April 4, 2013
Page 2

asked to conduct and the deadline in which the study needs to be completed. We therefore respectfully request the study be limited to those areas set forth in paragraphs (1), (2) and (6) of the measure and that House Bill No. 152, HD 1, SD1, Proposed SD2, be amended accordingly.

We sincerely appreciate the balanced approach being proposed by this committee. Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to read "Carolee C. Kubo", with a long horizontal flourish extending to the right.

Carolee C. Kubo
Director

**Testimony to the Senate Committee on Ways and Means
Thursday, April 4, 2013 at 9:00 A.M.
Conference Room 211, State Capitol**

**RE: HOUSE BILL 152 HD 1 PROPOSED SD 2 RELATING TO WORKERS'
COMPENSATION MEDICAL FEE SCHEDULES**

Chair Ige, Vice Chair Kidani, and Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") **supports** HB 152 HD 1 Proposed SD 2 Relating to Workers' Compensation Medical Fee Schedules.

The Chamber is the largest business organization in Hawaii, representing more than 1,100 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.

The Chamber believes that there is much anecdotal data and perspectives on workers compensation and by various groups such as employers, insurance companies, employees, physicians and health care providers, labor organizations and others. Each group has its own concerns and view point.

We believe that an overall study of workers compensation rates, the administrative system and the issue of access in urban and rural areas is important. Also the study should also view access in terms of the overall healthcare system and not just workers compensation.

We do not support the SD1 version which raises rates to 130 percent of the Medicare Resource Based Relative Value Scale. We believe that a study should be done first.

Thank you for this opportunity to express our views.



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

TIMOTHY M. DAYTON, CPCU, GENERAL MANAGER ALASKA & HAWAII
711 Kapiolani Blvd., Suite 300 ■ Honolulu, HI 96813-5238 ■ Email: tdayton@geico.com
Direct: (808) 593-1875 ■ FAX (808) 593-1876 ■ Cell: (808) 341-9252

Senate Committee on Ways and Means
Conference Room 211 State Capitol
Wednesday, April 4, 2013, 9:00 a.m.
HB 152, HD1, SD2 – Relating to the Medical Fee Schedule

Chair Ige, Vice-Chair Kidani and Members of the W&AM Committee:

My name is Timothy Dayton, General Manager for GEICO. GEICO provides motor vehicle insurance for 30% of the households in Hawaii that insure an automobile. **GEICO opposes HB 152 SD1 and supports HB 152 SD2 with an amendment which clarifies the intent of the Legislature to study the impact on motor vehicle Personal Injury Protection Coverage (PIP) or in the alternative leave the PIP Fee Schedule at the current 110% of Medicare.**

Thank you for the opportunity to submit this testimony.

Timothy M. Dayton, CPCU

SENATE COMMITTEE ON WAYS AND MEANS
Senator David Ige, Chair

April 4, 2013 at 9:00 a.m.
Conference Room 211

Supporting HB 152 HD 1 SD 1: Relating to Workers' Compensation Medical Fee Schedules.

The Healthcare Association of Hawaii advocates for its member organizations that span the entire spectrum of health care, including all acute care hospitals, a majority of home health agencies and hospices, as well as long term care facilities and other health care organizations. Our members contribute significantly to Hawaii's economy by employing nearly 20,000 people statewide, delivering quality care to the people of Hawaii.

Thank you for this opportunity to comment in support of HB 152 HD 1 SD 1, which authorizes the Director of Labor and Industrial Relations to raise the workers' compensation payments for health care from 110% to 130% of the Medicare fee schedule.

The workers' compensation law represents an arrangement between employers and employees in which both parties benefit. The law ensures that employees injured in the course of employment receive wage replacement and medical benefits from employers in exchange for relinquishing the right to sue employers for negligence.

The workers' compensation law requires that payments to health care providers are adequate. However, current payments to health care providers under Hawaii's workers' compensation law do not take into consideration the high costs of practicing in Hawaii. As a result, many physicians decline to take workers' compensation patients, and many injured employees do not have the same access to health care as the hundreds of thousands of Hawaii residents with private health care insurance.

Medicare fees to physicians are theoretically adjusted to reflect differences in practice costs in different areas of the nation. However, although overall costs in Hawaii are about 150% of the national average (Department of Business, Economic Development, and Tourism), Hawaii's FY2012 Medicare fee schedule was only 106% of the national average (Centers for Medicare and Medicaid Services).

An increase to 130% of Medicare fees would increase Hawaii's workers' compensation payments for health care to about 138% of the national average. This would still be below overall costs in Hawaii at 150% of the national average. However, the increase would give healthcare providers a more equitable rate relative to the costs of doing business in Hawaii. Ultimately, it would likely improve access through greater participation.

A study of workers' compensation fees is being contemplated instead of an increase in fees. The study would only delay reasonable access to care for many workers who have been injured on the job. There is ample evidence to show that the increase is needed now.

For the foregoing reasons, the Healthcare Association of Hawaii supports HB 152 HD 1 SD 1.



Twenty-Seventh Legislature
Regular Session of 2013

THE SENATE

Committee on Ways and Means
Senator David Y. Ige, Chair
Senator Michelle N. Kidani, Vice Chair
State Capitol, Conference Room 211
Thursday, April 4, 2013; 9:00 a.m.

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 152, HD1, SD1, PROPOSED SD2
RELATING TO WORKERS' COMPENSATION MEDICAL FEE SCHEDULES**

The ILWU Local 142 supports the intent of H.B. 152, HD1, SD1, proposed SD2, which requires the auditor to conduct a study on various aspects of the workers' compensation medical fee schedules and system in the State, including the sufficiency of current rates to provide access to the State's physicians that are willing to serve workers' compensation patients and fiscal impacts of increasing fee schedules.

In 1995, in response to employer concerns that increasing workers' compensation costs would drive them out of business, the Legislature enacted sweeping reforms of the workers' compensation law, including changing the medical fee schedule to no more than 110% of the Medicare Resource Based Relative Value Scale system. This resulted in a significant drop in premium and considerable savings for employers. Correspondingly, however, an alarming exodus of providers from the workers' compensation arena also occurred.

Three years later, in 1998, a report ("The Medical Fee Schedule Under the Workers' Compensation Law") was published by the Legislative Reference Bureau, which conducted a study at the direction of the Legislature to determine if the 110% ceiling should be adjusted, whether the fee schedule had a negative impact on access to specialty care or diminished the quality of care, and what the conditions were for adjusting the fee schedule.

The LRB's findings included, among others, that: (1) the 110% ceiling appeared to have a negative impact on access to specialty care by injured workers and diminished the number and quality of providers; and (2) the formula for the Medicare-RBRVS system did not take into account the differences in populations (i.e., injured workers and Medicare-eligible patients).

Recommendations from the study included, among others, that: (1) the ceiling for the fee schedule should be increased "as soon as practicable" to not less than 125% but no more than 130% of Medicare-RBRVS; and (2) a regular adjustment of the medical fee schedule be considered apart from federal Medicare standards.

This comprehensive study appears to have been ignored, whether inadvertently or purposefully, resulting in the workers' compensation medical fee schedule languishing at 110% of Medicare for almost 20 years. Since then, the number of providers willing to accept workers' compensation patients has significantly diminished. Thus, access to care for injured workers has been a continual problem, especially on the neighbor islands.

We do not know if increasing the fee schedule to 130% will attract more providers to accept injured workers as patients, but we believe it is worth a try. We support increasing the medical fees, even if not to the level of 130%.

However, we fully understand legislators' reluctance to enact legislation that has the potential for failure. That is why we also support the study being proposed in SD2, which will, hopefully, provide statistical data to justify the need for an increase in medical fees. The parameters of the study may need to be fine-tuned in conference, but a study may allay concerns of those not convinced by anecdotal testimony of the lack of providers willing to take workers' compensation patients due to inadequate reimbursement rates.

One concern, however, is that the Legislature must act on the results of the study. The 1998 study by the LRB pointed out several areas of concern and recommended regular reviews of the fee schedule. To go almost 20 years without a review, especially in light of the LRB recommendations, has been unfair to the dwindling number of providers who diligently provide treatment and care to injured workers trying to return to gainful employment.

The workers' compensation law was enacted to take care of workers injured on the job. H.B. 152 was introduced to ensure that injured workers will have access to medical care and a choice of physicians. The ILWU prefers the original H.B. 152, with, if not an increase to 130% of Medicare, at least a modest increase in medical fees. However, we also support a study to justify that increase and others and urge that the Legislative Auditor give this study high priority to ensure that a report can be presented before the next legislative session.

With these comments, the ILWU supports the intent of H.B. 152, proposed SD2. Thank you for the opportunity to share our views on this measure.

Twenty-Seventh Legislature
Regular Session of 2013

THE SENATE

Committee on Ways and Means
Senator David Y. Ige, Chair
Senator Michelle N. Kidani, Vice Chair
State Capitol, Conference Room 211
Thursday, April 4, 2013; 9:00 a.m.

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 152, HD1, SD1, PROPOSED SD2
RELATING TO WORKERS' COMPENSATION MEDICAL FEE SCHEDULES**

The ILWU Local 142 supports the intent of H.B. 152, HD1, SD1, proposed SD2, which requires the auditor to conduct a study on various aspects of the workers' compensation medical fee schedules and system in the State, including the sufficiency of current rates to provide access to the State's physicians that are willing to serve workers' compensation patients and fiscal impacts of increasing fee schedules.

In 1995, in response to employer concerns that increasing workers' compensation costs would drive them out of business, the Legislature enacted sweeping reforms of the workers' compensation law, including changing the medical fee schedule to no more than 110% of the Medicare Resource Based Relative Value Scale system. This resulted in a significant drop in premium and considerable savings for employers. Correspondingly, however, an alarming exodus of providers from the workers' compensation arena also occurred.

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The LRB's findings included, among others, that: (1) the 110% ceiling appeared to have a negative impact on access to specialty care by injured workers and diminished the number and quality of providers; and (2) the formula for the Medicare-RBRVS system did not take into account the differences in populations (i.e., injured workers and Medicare-eligible patients).

Recommendations from the study included, among others, that: (1) the ceiling for the fee schedule should be increased "as soon as practicable" to not less than 125% but no more than 130% of Medicare-RBRVS; and (2) a regular adjustment of the medical fee schedule be considered apart from federal Medicare standards.

This comprehensive study appears to have been ignored, whether inadvertently or purposefully, resulting in the workers' compensation medical fee schedule languishing at 110% of Medicare for almost 20 years. Since then, the number of providers willing to accept workers' compensation patients has significantly diminished. Thus, access to care for injured workers has been a continual problem, especially on the neighbor islands.

We do not know if increasing the fee schedule to 130% will attract more providers to accept injured workers as patients, but we believe it is worth a try. We support increasing the medical fees, even if not to the level of 130%.

However, we fully understand legislators' reluctance to enact legislation that has the potential for failure. That is why we also support the study being proposed in SD2, which will, hopefully, provide statistical data to justify the need for an increase in medical fees. The parameters of the study may need to be fine-tuned in conference, but a study may allay concerns of those not convinced by anecdotal testimony of the lack of providers willing to take workers' compensation patients due to inadequate reimbursement rates.

One concern, however, is that the Legislature must act on the results of the study. The 1998 study by the LRB pointed out several areas of concern and recommended regular reviews of the fee schedule. To go almost 20 years without a review, especially in light of the LRB recommendations, has been unfair to the dwindling number of providers who diligently provide treatment and care to injured workers trying to return to gainful employment.

The workers' compensation law was enacted to take care of workers injured on the job. H.B. 152 was introduced to ensure that injured workers will have access to medical care and a choice of physicians. The ILWU prefers the original H.B. 152, with, if not an increase to 130% of Medicare, at least a modest increase in medical fees. However, we also support a study to justify that increase and others and urge that the Legislative Auditor give this study high priority to ensure that a report can be presented before the next legislative session.

With these comments, the ILWU supports the intent of H.B. 152, proposed SD2. Thank you for the opportunity to share our views on this measure.

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

Committees on Ways and Means
Sen. David Ige, Chair
Sen. Michelle Kidani, Vice-Chair

Thursday, Apr. 4, 2013
9:00 AM, Conference Room 211

Re: Support to SB152,HD1, SD2.

Aloha Chair Ige, Vice-Chair Kidani and Members of the Committee,

My name is Glenn Ida representing the active members and retirees of the Plumbers and Fitters Local 675.

Local 675 supports HB152, HD1, SD2, requiring the auditor to conduct a study on various aspects of the worker's compensation medical fee schedules and system in the State, including the sufficiency of the current rates to provide access to the State's Physicians that are willing to serve worker's compensation patients and fiscal impacts of increasing fee schedules.

We are in support of this issue, in the hopes that fair, just and timely compensation will reach those physicians who provide medical care for injured workers in the worker's compensation system and will encourage other physicians to join, increasing the number of service providers.

Without an adequate number of physicians, the appropriate medical care will not get the injured workers back on the job, which puts a burden on the worker's compensation system and causes undue hardships to the worker and their families.

Therefore Local 675, supports HB152, HD1, SD2.

Thank you for this opportunity to testify.

Mahalo,

Glenn Ida



Property Casualty Insurers
Association of America

Advocacy. Leadership. Results.

To: Senator David Y. Ige, Chair
Senate Committee on Ways and Means

From: Mark Sektnan, Vice President

Re: **HB 152 HD1 SD1 Proposed SD2–Workers’ Compensation Fee Schedule**
PCI Position: SUPPORT FOR SD 2 AMENDMENTS

Date: Thursday, April 4, 2013
9:00 AM; Conference room 211

Aloha Chair Ige and Members of the Committee:

The Property Casualty Insurers Association of America (PCI) supports the proposed SD 2 draft which would ask the Auditor to study the impacts of increasing the workers’ compensation fee schedule from 110 percent of the Medicare fee schedule for Hawaii to 130 percent of the Medicare fee schedule for Hawaii. The study would also look at the potential impact on automobile insurers who would also be impacted by the increase.

PCI believes that Title 21, Chapter 386 – 21 (c) of the Hawaii Revised Statutes already gives the Director of the Labor and Industrial Relations Department the authority to increase the allowance under the Medicare fee schedule to ensure “rates or fees provided for in this section shall be adequate to ensure at all times the standard of services and care intended by this chapter to injured employees.” The Director has exercised this authority and has increased reimbursement rates when those who are asking for the increase are able to justify the need. PCI believes it is appropriate to continue to allow the Director to assess the reimbursement needs and the cost implications of changes to the medical fee schedule to ensure that injured workers are protected and the costs to employers are kept reasonable. It is also important to note that the 110 percent is effectively the floor and not the ceiling for charges.

The medical fee schedule in Hawaii applies not only to workers’ compensation but also to medical care provided under a personal auto policy and for medical care provided under a commercial personal injury policy. The bill could not only increase the costs of medical care in the workers’ compensation system and hence drive up the cost of workers’ compensation in Hawaii but it could also drive up the costs of medical care expenses for automobile insurance and therefore increase rates on Hawaii’s consumers.

For these reasons, PCI asks the committee to support **SD2**.

WIMAH

WORK INJURY MEDICAL ASSOCIATION OF HAWAII
91-2135 FORT WEAVER ROAD SUITE #170
EWA BEACH, HAWAII 96706

MAULI OLA
THE POWER OF HEALING

APRIL 4, 2013

COMMITTEE ON WAYS AND MEANS

HOUSE BILL 152 HD1, SD1, SD2 PROPOSED

REQUIRES THE AUDITOR TO CONDUCT AS STUDY ON VARIOUS ASPECTS OF THE WORKERS' COMPENSATION MEDICAL FEE SCHEDULES AND SYSTEM IN THE STATE OF HAWAII.

WORK INJURY MEDICAL ASSOCIATION OF HAWAII SUPPORTS AN OBJECTIVE STUDY TO CONFIRM HOUSE BILL 152 HD1 SD1 PASSAGE, TO INCREASE THE RATE OF REIMBURSHMENT FROM 110% TO 130% PRESCRIBED IN THE MEDICARE RESOURCE BASED RELATIVE VALUE SCALE FOR WORKERS' COMPENSATION OR TO ADJUST IT AS RECOMMENDED BY THE AUDITOR.

WE BELIEVE THIS IMMEDIATE RELIEF WILL IMPROVE THE PARTICIPATION BY WORKERS' COMPENSATION PRACTITIONERS WHILE THIS STUDY IS BEING CONDUCTED.

THIS OBJECTIVE STUDY WILL PROVIDE DIRECTION FOR THE WORKERS' COMPENSATION MEDICAL FEE SCHEDULE.

GEORGE M. WAIALEALE
EXECUTIVE DIRECTOR
WORK INJURY MEDICAL ASSOCIATION OF HAWAII

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

April 3, 2013

VIA ELECTRONIC MAIL

To: The Honorable Senator David Y. Ige, Chair, Michelle N. Kidani, Vice Chair
and Members of the Committee on Ways and Means

Date: Thursday, April 4, 2013

Time: 9:00 a.m.

Place: Conference Room 211, State Capitol
415 South Beretania Street

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

Re: HB 152, HD 1, SD1
Proposed SD2
Relating to Workers' Compensation

Please see testimony submitted for HB 152, HD1, SD1. Thank you.

DWSC:ty