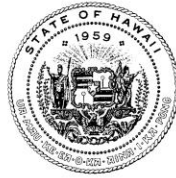


NEIL ABERCROMBIE  
GOVERNOR



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  
[www.hawaii.gov/labor](http://www.hawaii.gov/labor)  
Phone: (808) 586-8842 / Fax: (808) 586-9099  
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February 21, 2013

To: The Honorable Sylvia Luke, Chair,  
The Honorable Scott Y. Nishimoto, Vice Chair,  
The Honorable Aaron Ling Johanson, Vice Chair, and  
Members of the House Committee on Finance

Date: Thursday, February 21, 2013  
Time: 4:00 P.M.  
Place: Conference Room 308, State Capitol

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

**Re: H.B. No. 1176, H.D. 1, Relating to Workers' Compensation**

**I. OVERVIEW OF PROPOSED LEGISLATION**

HB 1176, HD1, proposes to amend Section 386-21, Hawaii Revised Statutes (HRS), that in the event a disagreement over specific charges cannot be reasonably resolved between the employer and provider of service, either party may request intervention by providing written notification to the director and the other party. The parties shall negotiate within thirty-one days following the notice to the director. If the negotiations fail to resolve the dispute, the parties shall file their positions within fourteen days immediately following the thirty-first day to the director and the director shall render an administrative decision that shall be final and not appealable.

The Department strongly supports this bill, as it will allow timely and effective resolution to contested billing issues. The proposal will help alleviate possible delays with injured workers receiving medical care, services and supplies and provide prompt resolution to disputed charges for providers of service.

**II. CURRENT LAW**

Workers' Compensation Medical Fee Schedule (WCMFS) Administrative Rule, Section 12-15-94 Payment by employer, allows for the following:

When a provider of service notifies or bills the employer, the employer shall inform the provider of service within sixty calendar days of such billing should the employer controvert the claim for services. Failure by the employer to notify the provider shall make the employer liable for services rendered until the employer controverts further services.

The employer, after accepting liability, shall pay all charges billed within sixty calendar days of receipt of the charges, except for items where there is reasonable disagreement. If more than sixty-calendar day's lapse between the employer's receipt of an undisputed bill and date of payment, the billing can be increased by one percent per month of the outstanding balance.

If there is a disagreement, within sixty calendar days of receipt of bill, the employer shall pay for all acknowledged charges and shall notify the provider of service, copying the claimant, of the denial and the reason for the denial. The denial must state that if the provider does not agree with the denial, they may file a bill dispute with the director within sixty calendar days after postmark of employer's denial and failure to do so shall be construed as acceptance of the denial.

If the disagreement cannot be resolved between the employer and provider of service, either party may make a written request for intervention to the director. The director shall send the parties a notice and the parties shall negotiate for thirty-one calendar days to resolve the dispute upon receipt of the Director's notice. If the parties fail to come to an agreement during the thirty-one calendar days, then within fourteen calendar days following the thirty-one day negotiating period, either party can request the director review the dispute. The director shall send both parties a second notice requesting they submit position statements and documentation within fourteen days following of the receipt of this second notice. The director shall review the positions of both parties and render an administrative decision. A service fee of \$500 will be assessed at the discretion of the director against either or both parties who fail to negotiate in good faith. The decision of the director is final and not appealable.

### **III. COMMENTS ON THE HOUSE BILL**

- The Department strongly supports HB 1176, HD 1, as it proposes to streamline the bill dispute process and offers a faster resolution of disputed charges between the employer and the medical provider. Because of the long process involved in resolving billing disputes, injured workers may see a delay in receiving needed medical care, service and supplies.

- This bill will potentially ease the administrative burden of resolving billing disputes and reduce the over 2,000 existing pending billing dispute cases by encouraging parties to settle their differences before sending their differences to the department to act on.

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

February 19, 2013

**TESTIMONY TO THE  
HOUSE COMMITTEE ON FINANCE**

For Hearing on Thursday, February 21, 2013  
4:00 p.m., Conference Room 308

BY

BARBARA A. KRIEG  
DIRECTOR

**House Bill No. 1176, H.D. 1**  
**Relating to Workers' Compensation**

TO CHAIRPERSON SYLVIA LUKE AND MEMBERS OF THE COMMITTEE:

Thank you for the opportunity to provide testimony on H.B. 1176, H.D. 1.

The purpose of H.B. 1176, H.D. 1, is to authorize the employer and provider of services to notify the Director of Labor and Industrial Relations in the event of a reasonable disagreement relating to specific medical service charges and provides for a nonappealable, nonhearing resolution process.

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 **opposes** this bill.

First, this measure is unnecessary and superfluous because it restates and codifies a bill dispute resolution process that is already set forth in the Hawaii Workers' Compensation Medical Fee Schedule (WCMFS), specifically Section 12-14-94(d), HAR. This process is triggered whenever there is a dispute between an employer and a "provider of service," defined in the WCMFS as "any person or entity who is licensed, certified, recognized, or registered with the Department of Commerce and Consumer

Affairs and who renders medical care, medical services, or medical supplies in accordance with chapter 386, HRS.” The WCMFS was promulgated by the Director of Labor and Industrial Relations (Director) pursuant to his rule-making authority and DHRD recognizes that Section 12-14-94(d), HAR, has the force of law even though it is not specifically set forth in Chapter 386-21, HRS. Moreover, Chapter 91, HRS, allows the Director to amend any provision within the WCMFS to streamline the process—without having to invoke the legislative process—after having fully and fairly considered the input of interested stakeholders from all sides of the workers’ compensation system.

Second, because Chapter 386 does not define and limit the phrase “provider of service,” this bill would essentially grant standing to third-party non-medical providers, including collection agencies, to litigate a billing dispute with employers at the Department of Labor and Industrial Relations (DLIR). See, e.g., State seeks to keep prices in check, Honolulu Star Advertiser, February 17, 2013. We believe this would increase the number of billing issues before the DLIR and its already overwhelmed hearings officers and staff. Any additional increase in the number of disputes will lead to further delays and costs in workers’ compensation claims processing, which is to the detriment of all parties.

Finally, we are particularly troubled by the provision of this bill which would make an administrative decision rendered by the Director on a billing dispute final and not appealable. In Jou v. Hamada, 201 P.3d 614 (2009), the Hawaii Intermediate Court of Appeals held that the WCMFS provision prohibiting appeal of the Director's billing dispute decisions in Section 12-15-94(d), HAR, is invalid as beyond the Director's rulemaking power. We recognize that it is well within the Legislature’s province to statutorily deny this right of appeal. However, should third-party non-medical providers obtain standing on DLIR billing disputes through passage of this bill, the State will also be exposed to having to pay exorbitant billing markups without any further legal recourse. See, e.g., State seeks to keep prices in check, Honolulu Star Advertiser, February 17, 2013.

We respectfully request that the committee hold this bill.

DEPARTMENT OF HUMAN RESOURCES  
**CITY AND COUNTY OF HONOLULU**

850 SOUTH KING STREET, 10<sup>th</sup> Floor  
HONOLULU, HAWAII 96813

KIRK CALDWELL  
MAYOR



CAROLEE C. KUBO  
DIRECTOR DESIGNATE

NOEL T. ONO  
ASSISTANT DIRECTOR

February 21, 2013

The Honorable Sylvia Luke, Chair  
and Members of the Committee on Finance  
State House of Representatives  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Luke and Members of the Committee:

Subject: Testimony on H.B. 1176 H.D. 1, Relating to Workers' Compensation

The Department of Human Resources, City & County of Honolulu, submits the following testimony in opposition to H.B. 1176 H.D. 1. The purpose of this bill is to authorize the employer or the provider of services to request intervention from the Department of Labor and Industrial Relations (DLIR) in reasonable disagreements involving billing disputes and to provide a process for administrative resolution of these disputes.

We oppose this bill as it is duplicative of the dispute resolution process already provided in section 12-14-94(d) of the Hawaii Workers' Compensation Medical Fee Schedule and because it does not define the term "provider of service." Without a definition of the term, the number of billing disputes before DLIR could significantly increase as third-party, non-medical providers could now bring billing disputes to DLIR for resolution. Unless additional resources are provided to DLIR, we foresee delays in the processing of workers' compensation claims, which would negatively affect all the parties.

We also note that this bill provides that the administrative decision rendered by the director of DLIR is final and that no appeal to the Labor Appeals Board would be permitted and that the director's final decision is based solely on position statements submitted by the parties; no hearings will be conducted, and any potential responses to statements or information in the adverse party's position statement cannot be considered prior to decision making. We realize that the intent of this bill is to provide an expedited process for resolving billing disputes, but we believe that the provisions of

The Honorable Sylvia Luke, Chair  
and Members of the Committee on Finance  
State House of Representatives  
February 21, 2013  
Page 2

this bill will only increase the number of disputes before DLIR and provide a less than complete record on which to resolve these disputes.

We thank you for giving us the opportunity to testify on this matter.

Sincerely,

A handwritten signature in black ink that reads "Carolee C. Kubo". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Carolee C. Kubo  
Director Designate

**Testimony to the House Committee on Finance  
Thursday, February 21, 2013 at 4:00 P.M.  
Conference Room 308, State Capitol  
Agenda #3**

**RE: HOUSE BILL 1176 HD 1 RELATING TO WORKERS' COMPENSATION**

Chair Luke, Vice Chairs Nishimoto and Johanson, and Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") **opposes** HB 1176 HD 1 Relating to Workers' Compensation.

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.

Our main concern is that the Director's decision is non-appealable. We do not believe that this is fair to either party. We also are opposed to the \$500 service fee. We believe this is fee to be excessive and also without appeal.

We also have concerns that there is no definition of "service provider" in HRS 386. This bill could have unintended consequences of adding more billing disputes and thereby creating more work for the Department of Labor and Industrial Relations and incurring additional costs to employers including government.

Thank you for this opportunity to express our views.



HOUSE OF REPRESENTATIVES  
TWENTY-SEVENTH LEGISLATURE  
REGULAR SESSION OF 2013

COMMITTEE ON FINANCE

Rep. Sylvia Luke, Chair  
Rep. Scott Y. Nishimoto, Vice Chair  
Rep. Aaron Ling Johanson, Vice Chair

Hearing: Friday, February 21, 2013  
Time: 4:00 p.m.  
Conference Room 308

TESTIMONY OF ILWU LOCAL 142 RE: HB 1176, H.D.1  
RELATING TO WORKERS' COMPENSATION

Chairman Luke, Vice Chair Nishimoto, Vice Chair Johanson, Members of the Committee on Finance:

Thank you for the opportunity to testify regarding HB 1176, H.D.1 We support this bill.

Section 386-21 HRS now simply provides that the Director may resolve medical fee disputes “in a summary manner as the director may prescribe.”

HB 1176, H.D. 1 seeks to improve this current procedure on resolving medical fee disputes and to provide greater specificity about how this is to be accomplished. The bill mandates a 31 day period of negotiation between the parties to resolve their dispute, and then affords them 14 days, if they cannot reach a solution, to submit position papers and supporting evidence to the Director, who will then render a non-appealable decision without a hearing. The Director is also authorized to assess a fine of up to \$500.00 against a party that does not bargain in good faith.

Because the parties to these disputes are sophisticated physicians, hospitals, and insurers, and the subject matter of their dispute involves technical application of the workers' compensation medical fee schedule, actual live hearings should not be necessary. However, by refining and clarifying the procedure the measure is a helpful and constructive step in improving the administration of this section of the workers' compensation statute.

While some may argue they are entitled to a full hearing in these matters, the curtailment of live hearings should be considered in the context of the major need to relieve the Disability Compensation Division of the burden of litigating every possible issue in a period of diminished resources. Resolving medical billing disputes promptly—even if it means sacrificing hearings—is a small price to pay for giving all parties greater efficiency in the overall disposition of claims and vital relief to the Department of Labor

and Industrial Relations as it strives ably to fulfill its duties completely in a time of fiscal austerity.

Accordingly, we urge that HB 1176, H.D. 1 be passed.

## State seeks to keep prices in check

POSTED: 01:30 a.m. HST, Feb 17, 2013

StarAdvertiser.com

Repackaged medications' huge markups can inflate workers' comp expense

By Rob Perez



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When the state received a workers' compensation bill for an anti-anxiety drug prescribed to an injured worker, the invoice was flagged because of a hefty price.

Had the diazepam been dispensed by a pharmacy, the tab would've been around \$1.41. That was the average national wholesale price for the 30 5-milligram pills, plus a 40 percent markup allowed under state law in workers' compensation cases, according to the state.

That 40 percent markup is the highest permitted in the country.

Yet the bill the state received for the physician-dispensed diazepam was \$164.32 — more than 160 times greater than what the pharmacy price would have been.

The state paid Prescription Partners, the billing company, the \$1.41. The company filed a challenge with the Department of Labor and Industrial Relations, which oversees workers' compensation cases, contesting the lower payment.

The dispute is one of more than 2,000 pending before the agency, and the vast majority of those were filed within the past year and involve what employers and insurers say are excessive prices for so-called repackaged or compound medications.

Several measures advancing at the state Legislature would address this growing problem, one that potentially can cost taxpayers millions of dollars in higher workers' compensation expenses.

The higher pricing for repackaged medications also can more quickly exhaust motorists' personal injury protection dollar limits from their auto insurance policies, increasing consumers' out-of-pocket expenses, and add upward pressure to premiums, insurers say.

Repackaged drugs, like the diazepam prescribed to the state worker, are dispensed directly from the physician to the patient, rather than through a pharmacy. They show up mostly in workers' compensation and auto injury cases, and only a small number of Hawaii doctors — one estimate was less than 30 statewide — dispense medications in this fashion.

But with substantial markups, repackaged drugs can quickly drive up medical costs and are one of the main factors

The city, for instance, was billed about \$53,000 for repackaged drugs in 2005, the first year repackagers emerged in the Hawaii market. In 2012, the tab hit nearly \$700,000.

The dramatic increase in the use of repackaged drugs has led to a dramatic increase in medication billing disputes before the labor agency.



**Josh**

**Green:**

*The state senator and emergency room physician agrees that prices for repackaged drugs are excessive*

Until several years ago, such challenges were unheard of, according to employers and insurers.

Today, the 1,800-plus repackaging disputes have overwhelmed the department's staff, leading the agency this year to support a legislative measure, House Bill 1176, to streamline the resolution process.

Several other bills being considered by lawmakers would tackle the problem from another angle: establishing a price cap to rein in excessive charges. One measure, HB 891, is part of the Abercrombie administration's legislative package and is advancing in the House.

Although state law already regulates drug prices in workers' compensation and auto injury cases, a loophole basically allows repackagers to set virtually any wholesale amount, resulting in markups ranging from 100 percent to more than 1,000 percent, employers and insurers say.

"These charges are so far out of line," said Kris Kadzielawa, director of operations for Solera Integrated Medical Solutions, which assists clients, including the city, in reviewing workers' compensation and auto injury claims. "When they started popping up on our radar, they didn't just pop up. Our radar almost blew up."

Although several repackagers currently operate in Hawaii, the vast majority of the disputes involve Prescription Partners, an affiliate of Florida-based Automated HealthCare Solutions and a major player in the local market, according to employers and insurers.

The city alone has more than 500 disputes pending, and all but a few involve Prescription Partners, according to Kadzielawa and a city spokesman. The contested tab: \$826,000.

The city and insurers say the company has refused to provide sufficient documentation to justify the high prices.

Asked about the numerous disputes, an Automated HealthCare spokeswoman told the Star-Advertiser that the company for several months attempted to work with insurance carriers to resolve outstanding unpaid and underpaid claims.

"It quickly became clear that the carriers were unwilling to cooperate with AHCS/Prescription Partners — in some instances paying zero dollars on a claim," spokeswoman Alia Faraj-Johnson said in a written response. That prompted the company to file formal disputes with the Labor Department.

"We believe injured workers should have access to immediate care, receiving appropriate medications and treatment — allowing them to get back to work faster," Faraj-Johnson wrote. "This results in better outcomes for the injured workers and reduces overall costs to businesses and the workers compensation system."

Failing to reimburse the company for services rendered is not an appropriate option, she added. "Simply said, physicians have been upholding their responsibility to help the workers compensation system work for patients," Faraj-Johnson wrote. "It is the carriers who, by nonpayment of claims, threaten the stability of this system."

Automated HealthCare last year opposed legislative attempts to establish a price cap for repackaged drugs. The House adopted a cap bill but it died in the Senate.

Price-cap opponents argued that employers were highlighting extreme cases to present a misleading picture and that

a cap could shrink an already limited pool of Hawaii physicians willing to treat injured workers.

Opponents also highlighted the many benefits to injured workers, including convenience and better adherence to medication regimens, when the employees get drugs directly from physicians.

But this year, Automated HealthCare is supporting a price cap, saying aspects of the bills before the Legislature are fair to all parties. Others who also opposed last year's bill are voicing general support for a cap. One version allows doctors to charge a dispensing fee, raising concerns among some insurers.

Sen. Josh Green, an emergency room physician who chairs the Senate Health Committee, believes a combination of capping prices and streamlining the dispute process is needed to protect consumers from what he agrees are pricing abuses in the repackaged drug market.

"I'll certainly do my part to get a resolution that is fair to both sides," said Green, who supported SB 876, a streamlining measure, that was referred to and approved by his committee.

George Waialeale, executive director of the Work Injury Medical Association of Hawaii, which represents mostly people in the medical field, said his group supports separate caps for brand and generic drugs — an approach insurers tend to dislike.

Waialeale said his organization opposes attempts to limit physician dispensing to the initial patient visit and to a 30-day supply, as one bill does. "In a state where access to care is already an issue, such additional restraints should not be allowed," he said in a written statement to the Star-Advertiser.

The rapid rise in medication billing disputes in workers' compensation cases is all the more noteworthy because until several years ago, few if any were reported.

Michael Golojuch Jr., spokesman for the Department of Human Resources Development, which handles such cases for most state agencies, said it had no medication billing disputes four years ago.

Today, the department has roughly 250 potential disputes, Golojuch said.

City officials similarly could not recall having any billing disputes until three or four years ago, when the repackaging cases started to surface, according to Jesse Broder Van Dyke, a city spokesman.

Kadzielawa, the city consultant, said he has been reviewing workers' comp and auto insurance claims for various clients for 20 years and has never had to challenge prices for pharmacy-dispensed drugs.

At a recent legislative hearing, Tim Dayton, who heads the Hawaii operation for GEICO, the state's largest auto insurer, held up a bottle of a homeopathic topical spray for which a customer was charged \$416 by a repackager.

A similar product online costs about \$18, Dayton said.

Reimbursements for medications in workers' comp and auto injury cases in Hawaii are tied to national average wholesale prices as listed in what's called the American Druggist Red Book. The wholesale price is linked to the original manufacturer's so-called national drug code and is set by the manufacturer.

Asked why there can be huge price disparities between pharmacy-dispensed and physician-dispensed drugs, Faraj-Johnson, the Automated HealthCare spokeswoman, told the Star-Advertiser that the company fully abides by Hawaii law and uses the average wholesale prices and drug codes for repackaged drugs, not the manufacturers' ones.

Asked to explain why repackaged and manufacturer prices can vary by such huge amounts, she would not elaborate.

## DISPUTE OVER PRICES

The chart below shows four examples of what the state was billed for physician-dispensed medications in workers' compensation cases and what it paid the drug repackager's billing company. Physicians buy drugs from repackagers to dispense directly to patients, bypassing the usual pharmacy route. The paid amount equaled the average wholesale price of the drug plus a 40 percent markup allowed under state law. The paid amount also would have approximated the billed price if the drug had been dispensed by a pharmacy.

DRUG	USE	QUANTITY	BILLED	PAID
Diazepam	Anti-anxiety	5 mg, 30 pills	\$164.32	\$1.41
Methadone HCl	Pain relief	10 mg, 120 pills	\$451.20	\$24.76
TranzGel	Topical pain relief cream	50 ml, 4 tubes	\$1,110.31	\$10.07
Soma	Muscle relaxant	350 mg, 120 pills	\$1,116.84	\$11.17

Source: state Department of Human Resources Development

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TESTIMONY BEFORE THE HOUSE

COMMITTEE ON FINANCE

Thursday, February 21, 2013  
4:00 p.m.

HB 1176, HD1  
RELATING TO WORKERS' COMPENSATION

By Marleen Silva  
Director, Workers' Compensation  
Hawaiian Electric Company, Inc.

Chair Luke, Vice Chair Nishimoto, Vice Chair Johanson, and Members of the Committee:

Hawaiian Electric Co. Inc., its subsidiaries, Maui Electric Company, LTD., and Hawaii Electric Light Company, Inc. **respectfully oppose H.B. 1176, HD1.** Our companies represent over 2,000 employees throughout the State.

This bill proposes to amend Section 386-21, HRS requiring negotiation for a period of thirty-one calendar days following the date of notice of billing disputes between the employer or medical services provider to the Director of Labor and Industrial Relations. It allows the parties to request the Director render an administrative decision without a hearing in the event the parties fail to reach agreement within the negotiation period. It also establishes that the decision rendered by the director to be final and nonappealable. At the discretion of the Director, either party may be also be assessed a service fee of up to \$500 payable to the State of Hawaii general fund for failing to negotiate in good faith.

Disputes of medical services and their associated fees arise when it appears they may be excessive, unreasonable, unnecessary, or unrelated to a work injury. We feel the current bill dispute process set forth in the Hawaii Workers' Compensation Medical Fee Schedule, specifically Section 12-14-94(d), is working as intended.

To better address the volume of bill disputes pending resolution with the Department of Labor, we suggest an audit be conducted to identify and evaluate the types of issues in dispute. This would be helpful to identify before any changes are made, ensuring proposed solutions will address specific problems and avoid bringing any unintended consequences with new regulation.

For these reasons, we respectfully oppose H.B. 1176, HD1 and request that this measure be held.

Thank you for this opportunity to submit testimony.

## **FINTestimony**

---

**From:** Matthew Matsunaga [mmatsunaga@schlackito.com]  
**Sent:** Wednesday, February 20, 2013 12:29 PM  
**To:** FINTestimony  
**Subject:** Testimony Regarding House Bill 1176 HD 1



**DATE:** Thursday, February 21, 2013  
**TIME:** 4:00 P.M.  
**PLACE:** Conference Room 308  
State Capitol  
415 South Beretania Street

### **Testimony Regarding House Bill 1176 HD 1**

Automated HealthCare Solutions (“AHCS”) strongly supports House Bill 1176 HD 1 (Relating to Workers’ Compensation) as a vehicle to assist the Hawaii Department of Labor and Industrial Relations (“DLIR”) with a dispute process that is currently facing tremendous backlog. AHCS believes House Bill 1176 HD 1 will serve to better streamline the dispute resolution process by eliminating the superfluous step in the current dispute process which requires DLIR to send out notices to the parties before they may begin negotiations.

Thank you for your consideration.

Jennifer Maurer, Esq.  
Government Relations Director  
Automated HealthCare Solutions, LLC  
2901 SW 149th Avenue, Ste. 400  
Miramar, FL 33027

**Submitted by AHCS’ attorney:**



**Matthew M. Matsunaga**



**Topa Financial Center • 745 Fort Street, Suite 1500 • Honolulu, Hawaii 96813**

**Direct: (808) 523-6061 • Main: (808) 523-6040 • Fax: (808) 523-6030**

**Email: <mailto:mmatsunaga@schlackito.com> • Website: [www.schlackito.com](http://www.schlackito.com)**

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February 20, 2013

COMMITTEE ON FINANCE

Representative Sylvia Luke, Chair

Representative Scott Y. Nishimoto, Vice Chair

Representative Aaron Ling Johanson, Vice Chair

Hearing: 2/21/13 Time: 4:00 p.m.

Place: Conference Room 308

State Capitol

TO: Representatives Luke, Nishimoto and Johanson

FROM: Milia Leong, Vice President – Claim Manager at John Mullen & Co., Inc., Workers Compensation Department

**RE: HB 1176, HD1 RELATING TO WORKERS' COMPENSATION**

Thank you for the opportunity to provide testimony on HB 1176, HD1. My name is Milia Leong and I am the Vice President – Claim Manager of the Workers' Compensation Department at John Mullen & Company, Inc., Hawaii's largest third party administrator. We have been handling multiline insurance claims for over 50 years in the state and I have personally adjusted, supervised and managed Workers' Compensation claims for over 19 years on behalf of hundreds of insureds, self-insureds, State, City & County, and captive employers.

John Mullen & Company, Inc. opposes HB 1176, HD1 and offers the following comments in support of our position:

- The measure is unnecessary and reiterates a bill dispute resolution process already in effect pursuant to Section 12-14-94(d) of the Hawaii State Medical Fee Schedule.
- HB 1176, HD1 states "in the event a reasonable disagreement relating to specific charges cannot be resolved, the employer or **provider of service**" may request intervention by the Director." Since Chapter 386 does not define and limit the phrase "provider of service," this Bill opens the door for third party non-medical providers to file billing disputes with the Department of Labor, which will undoubtedly further backlog the already strained hearings branch.
- HB 1176, HD1 is silent as to the required 60-day allowable timeframe for employers/carriers to submit payment pursuant to Section 12-14-94 (c) of

the Hawaii State Medical Fee Schedule. If passed, providers will be able to file billing requests at anytime following submission of an invoice.

- HB 1176, HD1 seeks the administrative decision rendered by the Director to be final and non-appealable. In Emerson M.F. Jou, M.D., Provider-Appellant v. Gary S. Hamada, Administrator, Disability Compensation Division, Darwin Ching, Director, Department of Labor & Industrial Relations, and Argonaut Insurance, Intermediate Court of Appeals Decision dated 1/26/2009, the court published an opinion that invalidated Section 12-15-94(d). The ICA invalidated this section of the administrative rule as being inconsistent with the other statutory provisions allowing the right of appeal of a decision from the Director and that the enactment of this rule exceeded the Director's rule-making authority.

For reasons above, John Mullen & Company, Inc. opposes HB 1176, HD1.

COMMENTS: It is respectfully requested that an inquiry be made to the Department of Labor to seek clarification as to the reported 2000 pending billing disputes currently before the Director.

Clarification must be sought to determine whether or not this proposed legislative change to Section 386-21 is being driven solely by third party billers who are responsible for astronomical cost increases in workers compensation claims. It would be unfortunate to unnecessarily change legislation that will result in further backlog at the hearings branch and increase administration costs for the State of Hawaii, solely for the benefit of out of state billers who provide absolutely no service to the injured worker.

For many years, the current billing dispute process has been successful between employers/carriers and medical service providers without the need for intervention by the Department of Labor. Prior to these third party billing companies surfacing in Hawaii, we had no billing disputes before the Director.

We respectfully request that the Committee hold this measure.

ML:rp  
B8-8

# DENNIS W. S. CHANG

Attorney at Law, LLLC

WORKER'S RIGHTS - LABOR LAW  
WORKER'S COMPENSATION  
SOCIAL SECURITY DISABILITY  
LABOR UNION REPRESENTATION  
EMPLOYEES RETIREMENT SYSTEM  
BODILY INJURIES

HOUSE OF REPRESENTATIVES  
TWENTY-SEVENTH LEGISLATURE, 2013  
STATE OF HAWAII

February 20, 2013

VIA ELECTRONIC MAIL

TO: Rep. Sylvia Luke, Chair  
Rep. Scott Y. Nishimoto, Vice Chair  
Rep. Aaron Ling Johanson, Vice Chair  
and Members of the Committee on Finance

DATE: Thursday, February 20, 2013  
TIME: 4:00 p.m.  
PLACE: Conference Room 308, State Capitol  
415 South Beretania Street

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

**Re: HB 1176, HD1 Relating to Workers' Compensation  
Strong Support  
(AMENDED)**

Thank you for allowing me to express my views, and I [bold added] fully endorse the underlying intent of HB 1176, HD1.

Currently the Disability Compensation Division (DCD) holds hearings on all disputes and the introduction of this bill highlights the tragic budget shortfalls and hiring freeze that have adversely impacted on the ability to hold timely hearings over various disputes. The Director of Labor and Industrial Relations (Director) should be applauded for seeking an innovative approach to resolve at least some of the disputes so that the DCD can focus on the more critical genuine disputes among injured workers, employers and insurance carriers. After all, the Workers' Compensation Law was enacted in 1915 as a humanitarian safety net by stripping away the right to sue in exchange for prompt payments of workers' compensation benefits to injured workers.

HB 1176, HD1 goes a long way in attempting to remove the backlog where injured workers must wait countless months and at times, even more than a year to have their disputes addressed for what should have been summary payment of workers' compensation benefits. One only needs to look at the backlog of cases filed with the Director as disclosed by the Sunday newspaper on more than 1500 disputes relating to the repackaging of medications filed recently.

The introduction of this bill highlights the critical need to take action. Of all the divisions, the DCD has been crippled because it is not funded by any federal monies. HB 1176, HD1 should be given a sincere review and passage to ameliorate what is becoming a dysfunctional division. I have practiced for nearly 36 years and have witnessed longer and longer delays in securing hearings for the benefit of my clients.

There should be no delay when it comes to paying injured workers their rightful benefits. The Director has moved in the right direction in his attempt to reduce non-essential hearings and pushing the hearings for injured workers to the forefront with HB 1176, HD 1. For this reason, I wholeheartedly support this creative bill.