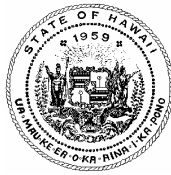


HB 1176

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

January 30, 2013

**TESTIMONY TO THE
HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT**

For Hearing on Friday, February 1, 2013
8:00 a.m., Conference Room 309

BY

BARBARA A. KRIEG
DIRECTOR

House Bill No. 1176
Relating to Workers' Compensation

TO CHAIRPERSON MARK NAKASHIMA AND MEMBERS OF THE COMMITTEE:

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

The purpose of H.B. 1176 is to authorize the employer and provider of services to notify the director of labor and industrial relations of a reasonable disagreement relating to specific medical service charges; require that the notice is done in writing and that the parties negotiate during the thirty-one calendar days following the date of the notice; allow parties to request the director to render an administrative decision without a hearing if the parties fail to reach an agreement within the thirty-one day negotiation period; and establish that the administrative decision by the director is final and nonappealable.

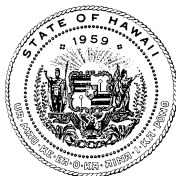
The Department of Human Resources Development (DHRD) **opposes** this bill.

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). 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 pursuant to his rule-making authority and DHRD recognizes that Section 12-14-94(d) has the force of law even though it is not specifically set forth in Chapter 386-21, HRS.

Second, because Chapter 386 does not define and limit the phrase “provider of service,” this bill may have the untoward consequence of granting standing to third-party non-medical providers to litigate a billing dispute with employers at the Department of Labor and Industrial Relations (DLIR). We believe this would increase the number of billing issues before the DLIR and its already overwhelmed hearings officers and staff. Any increase in the number of disputes will lead to further delays in workers’ compensation claims processing, which is to the detriment of all parties.

We respectfully request that the committee hold this bill.



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

830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813
www.hawaii.gov/labor
Phone: (808) 586-8842 / Fax: (808) 586-9099
Email: dlir.director@hawaii.gov

February 1, 2013

To: The Honorable Mark Nakashima, Chair,
The Honorable Mark Hashem, Vice Chair, and
Members of the House Committee on Labor

Date: Friday, February 1, 2013
Time: 8:00 a.m.
Place: Conference Room 309, State Capitol

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

Re: H.B. No. 1176 Relating to Workers' Compensation

I. OVERVIEW OF PROPOSED LEGISLATION

HB 1176 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 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.

- In addition, with over 2,000 billing disputes pending, this bill will potentially reduce the administrative burden of resolving billing disputes by encouraging parties to settle their differences before sending their differences to the department to act on.

The department has the following suggestions:

The existing language on page 3, lines 1-6, of HB 1176, which is proposed to be struck, does not affect the proposed language and we therefore recommend that it not be stricken. DLIR suggests that the underscored language be a subsection of the same paragraph.

The proposed language would make the director's decision on bill dispute not appealable. For clarity, DLIR suggests language to note that the proposed is an exception to HRS 386-73 and 386-87.

DEPARTMENT OF HUMAN RESOURCES
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 10th Floor
HONOLULU, HAWAII 96813

KIRK CALDWELL
MAYOR



CAROLEE C. KUBO
DIRECTOR DESIGNATE
NOEL T. ONO
ASSISTANT DIRECTOR

February 1, 2013

The Honorable Mark M. Nakashima, Chair
and Members
Committee on Labor and Public Employment
State House of Representatives
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Nakashima and Members of the Committee:

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

The Department of Human Resources, City & County of Honolulu, submits the following testimony in opposition to H.B. 1176. 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 Mark M. Nakashima, Chair
and Members of the Committee on Labor and Public Employment
State House of Representatives
February 1, 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 large initial "C".

CAROLEE C. KUBO
Director Designate

HOUSE OF REPRESENTATIVES
TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2013

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Rep. Mark M. Nakashima, Chair
Rep. Mark J. Hashem, Vice Chair

Hearing: Friday, February 1, 2013
Time: 8:00 a.m.
Conference Room 309

TESTIMONY OF ILWU LOCAL 142 RE: HB 1176
RELATING TO WORKERS' COMPENSATION

Chairman Nakashima, Vice Chair Hashem, Members of the Committee:

Thank you for the opportunity to testify regarding HB 1176. 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 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.

Accordingly, we urge that HB 1176 be passed.

**Testimony to the House Committee on Labor and Public Employment
Friday, February 1, 2013 at 8:00 A.M.
Conference Room 309, State Capitol**

RE: HOUSE BILL 1176 RELATING TO WORKERS' COMPENSATION

Chair Nakashima, Vice Chair Hashem, and Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") **expresses concern** of HB 1176 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 with the \$500 service fee. We believe this fee is excessive and without appeal.

Thank you for this opportunity to express our views.

From: Matthew Matsunaga [mmatsunaga@schlackito.com]
Sent: Thursday, January 31, 2013 6:54 PM
To: LABtestimony
Subject: Testimony in support of HB 1176 with comments
Attachments: FAC 69L-31.doc

LATE TESTIMONY

DATE: Friday, February 01, 2013
TIME: 8:00 a.m.
PLACE: Conference Room 309
State Capitol
415 South Beretania Street

Chair Nakashima, Vice Chair Hashem and members of the Committee on Labor & Public Employment:

Automated HealthCare Solutions, LLC ("AHCS") strongly supports HB 1176 (Relating to Workers' Compensation) as a vehicle to assist DLIR with the dispute process that is currently facing tremendous backlog.

We respectfully ask that the Committee consider the following suggestions:

- **With respect to the proposed "service fee" assessed against parties who fail to negotiate in good faith** → We would propose that the \$500 fee payable to the State of Hawaii general fund be assessed on a per claim basis in an effort to deter carriers from continuing to engage in improper reimbursement tactics. We would further support a "repeat offender" provision to curtail carriers from repeatedly engaging in improper reimbursement tactics. For example, if a provider challenges a carrier's denial or underpayment and subsequently receives a successful decision from the department that the carrier issued an improper reimbursement and/or failed to negotiate in good faith, the provider should be able to attach that favorable decision to any future dispute petition where the carrier has improperly denied or disallowed reimbursement based on that same "rationale." If successful, the carrier would be assessed a penalty that would increase incrementally for each subsequent use of the improper reimbursement or bad faith negotiation.
- **"Batching" Suggestion (General Comment on Dispute Resolution Process)** → The current dispute resolution process for denials or disallowances of a claim is cumbersome and not designed to provide for efficient resolution of claims. Under the current regulatory scheme, a provider must dispute each denial or disallowance separately, which is not only very time consuming, but very costly to all parties,

including the department. We propose that the department consider a method to “consolidate” or “batch” multiple petitions common to a particular carrier and a particular substantive issue or stated rationale for denying payment. This would be an effective mechanism for expediting the backlog of petition.

Suggested “Batching” Language (Florida Language): The Florida dispute resolution rule on consolidation of petitions states: “(1) If multiple petitions addressing the same substantive issue(s) have been filed by petitioner contesting disallowance or adjustment of payment by the same carrier, the Department may, in its discretion, consolidate the petitions into a single determination. (2) If the Department consolidates multiple petitions into a single determination, the timetable for rendering a determination upon a consolidated petition shall be expanded to 120 days after Department receipt of all documentation.” Fla. Admin. Code 69L-31.006 (see attached).

- **60-Day Payment Provision (Clarification Request)** → The DLIR language in HB 1176 does not include the 60-day payment provision currently set forth in the dispute resolution rules. *See* H.A.R. 12-15-94(c) (“The employer, after accepting liability, ***shall pay all charges billed within sixty calendar days of receipt of such charges*** except for items where there is a reasonable disagreement. If more than sixty calendar days lapse between the employer's receipt of an undisputed billing and date of payment, payment of billing shall be increased by one per cent per month of the outstanding balance. . . .”). We would like some additional clarity as to whether the provisions in the existing dispute resolution rules, which are not contrary to HB 1176, will remain intact (specifically, the 60-day payment rule for undisputed claims).

Thank you for your consideration.

Jennifer Maurer, Esq.
Government Relations Director
Automated HealthCare Solutions, LLC
2901 SW 149th Avenue, Ste. 400
Miramar, FL 33027
954.416.8403 Office
954.892.2497 Cell
954.465.2257 Fax

Submitted by AHCS' attorney:

Matthew M. Matsunaga



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Email: <mailto:mmatsunaga@schlackito.com> • Website: www.schlackito.com

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WIMAH

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

MAULI OLA
THE POWER OF HEALING

LATE TESTIMONY

FEBRUARY 1, 2013

COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

HOUSE BILL 1176 RELATING TO WORKERS' COMPENSATION

AUTHORIZES 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. REQUIRES THAT THE NOTICE OF THE DISPUTE IS DONE IN WRITING AND THAT THE PARTIES NEGOTIATE DURING THE THIRTY-ONE CALENDAR DAYS FOLLOWING THE DATE OF THE NOTICE TO THE DIRECTOR. ALLOWS PARTIES TO REQUEST THE DIRECTOR TO RENDER AN ADMINISTRATIVE DECISION WITHOUT A HEARING IN THE EVENT THE PARTIES FAIL TO REACH AN AGREEMENT WITHIN THE THIRTY-ONE DAY NEGOTIATION PERIOD. ESTABLISHES THE ADMINISTRATIVE DECISION RENDERED BY THE DIRECTOR IS FINAL AND NONAPPEALABLE.

YOUR PASSAGE OF THIS BILL WILL BE GREATLY APPRECIATED.

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



February 1, 2013

LATE TESTIMONY

To: The Honorable Mark M. Nakashima, Chair
And Members of the House Committee on Labor and Employment

Date: February 1, 2013

Time: 8:00 AM

Place: Conference Room 309

Re: **HB 1176 Relating to Workers' Compensation bill dispute process**

Chair Nakashima, Vice-Chair Hashem and Members of the Committee:

My name is Kris Kadzielawa and I am the Director of Operations for Solera Integrated Medical Solutions, Hawaii's largest provider of payment integrity services to workers' compensation and automobile insurance programs.

We are strongly opposed to this measure. While HB 1176 appears reasonable on the surface, we are concerned that it will essentially remove the orderly and effective bill dispute resolution process we've had in workers' compensation for years and allow the parties to initiate the process without the Department's approval. It will thus allow providers to force the process on the employer and the Department without the Department actually administering the process but still forcing the Department to make a final decision on the disputed bill.

HB 1176 seeks to replace HAR 12-15-94(d) while removing several important provisions contained in HAR 12-15-94(d) and HRS 386-21(c) regarding bill disputes and cost limits. HB 1176:

1. Removes the requirement that the Director initiate and administer the dispute process when requested by the employer or provider of service.
2. Removes the requirement that the Director must notify both parties that a position statement is due.
3. Makes the Department's decisions un-appealable. In *Jou vs. Hamada*, the ICA opined the non-appeal enforced by DCD prior to 2009 superseded HRS 386. All parties should have the right of an Appeal as currently exists in other proceedings within the Hawaii Workers' Compensation system.
4. Removes a key pricing control of capping provider reimbursement at "private patient charges" thus allowing for pricing aberrations.



We believe this bill is primarily designed to serve bill collectors for the physician dispensing and drug repackaging industry which has been identified as responsible for a 400% increase (2011-2012 vs. 2010-2011) in workers' compensation bill disputes in Florida.

In summary, HB 1176 will allow providers to force employers and the Department of Labor into bill disputes. It removes the procedures that the Department effectively uses to administer the bill dispute process and removes the pricing cap which currently limits pricing aberrations. In addition it will likely increase the number of bill disputes several-fold and place an unreasonable burden on employers and the Department of Labor.

Thank you for the opportunity to testify on this measure.

Mahalo,

A handwritten signature in black ink, appearing to read "Kris Kadzielawa", is written over the printed name.

Kris Kadzielawa

Director of Operations

Solera Integrated Medical Solutions

841 Bishop Street, Suite 2250

Honolulu, Hawaii 96813

LATE TESTIMONY

**Al Lardizabal, Government Relations
Hawaii Laborers' Union
1617 Palama Street
Honolulu, HI 96817
Phone 808.841.5877**

**Labor and Public Employment Committee
February 1, 2013
8:00 a.m.
Room 309**

**TESTIMONY IN SUPPORT
HB1176 – Relating to Workers' Compensation**

Chair Nakashima:

The Hawaii Laborers' Union strongly supports this bill allowing parties to request the Director of the Department of Labor and Industrial Relations to make a decision without a public hearing when the parties fail to reach an agreement within the 31 day negotiation period

Mahalo,

Al Lardizabal