



LATE

THE HAWAII STATE HOUSE OF REPRESENTATIVES
The Twenty-Seventh Legislature
Regular Session of 2013

COMMITTEE ON FINANCE

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

DATE OF HEARING: Thursday, February 21, 2013
TIME OF HEARING: 4 p.m.
PLACE OF HEARING: Conference Room 308

TESTIMONY ON HB1176 HD1 RELATING TO WORKERS' COMPENSATION

By DAYTON M. NAKANELUA,
State Director of the United Public Workers, AFSCME Local 646, AFL-CIO

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 01 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.

The UPW supports HB1176 HD1 that would require prompt resolution of disputes and facilitate the delivery of care to injured workers. This measure may also encourage the parties involved to resolve their disagreements without the intervention of the Director of Labor & Industrial Relations and may help to reduce the caseload faced by the Department of Labor & Industrial Relations.

Thank you for the opportunity to testify.

WIMAH

LATE

WORK INJURY MEDICAL ASSOCIATION OF HAWAII
91-2135 FORT WEAVER ROAD SUITE #170
EWA BEACH, HAWAII 96706
EMAIL: WIMAHDIR@AOL.COM
PHONE: (808) 383-0436

MAULI OLA
THE POWER OF HEALING

FEBRUARY 21, 2013

COMMITTEE ON FINANCE

HOUSE BILL 1176 HD1 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



Hawaii Injured Workers Association

715 South King Street, Suite 410

Honolulu, HI 96813

Phone: (808)538-8733

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

February 21, 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: Hawaii Injured Workers Association

**Re: HB 1176, HD1 Relating to Workers' Compensation
Strong Support with Comment**

The Hawaii Injured Workers Association (HIWA) wholeheartedly supports the intent of HB 1176, HD 1. The Bill will undoubtedly fast-track the disputes over outstanding billings of medical providers who have remained unpaid.

Our organization clearly supports the Bill's attempt to undo the backlog of these unique disputes between medical providers and employers and insurance carriers because it will free the Disability Compensation Division (DCD) to focus on the most critical disputes among injured workers, self-insured employers and insurance carriers. This is unquestionably the step in the right direction to free the DCD to carry out its essential functions for injured workers. The Director of Labor and Industrial Relations (Director) should be credited with this innovative bill as a legitimate compromise in resolving increasing disputes that have arisen in the last few years.

However, HIWA takes no position on the portion of the Bill that precludes a hearing and an appeal. The Legislature should review whether the underlying intent in the Bill as structured may violate any constitutional provision.

All in all, HIWA fully supports the Director's Bill and his bold attempt to force the DCD to focus on more pressing matters such as disputes over the entitlements of injured workers. But for the question relating to any possible constitutional infirmity, HIWA unequivocally supports this creative Bill. The Director is clearly attempting to resolve the most pressing needs for injured workers in light of the gross shortage in DCD staff.

Thank you for allowing our organization to testify on this essential Bill, which should do wonders for injured workers by having prompt hearings to address their disputes.

February 21, 2013

LATE

To: The Honorable Sylvia Luke, Chair
And Members of the House Committee on Finance

Date: February 21, 2013

Time: 4:00 PM

Place: Conference Room 308

Re: **HB 1176 HD1 Relating to Workers' Compensation bill dispute process**

Chair Luke, Vice-Chairs Nishimoto and Johanson, 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. However, we would be in support of this measure if it codified the current bill dispute resolution process specified in HAR 12-15-94(d).

While HB 1176 HD1 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 create an administrative morass in the system for employers and the Department.

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 HD1:

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. This may be unconstitutional as it allows a "taking" without due process. 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 price gouging by providers of service.



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.

Since HB1176 HD1 decouples the dispute resolution process from the Hawaii Administrative Rules, it leaves out the pertinent definitions of parties subject to the dispute process.

In summary, HB 1176 HD1 will allow bill collection agencies who are not providers of service to force employers and the Department of Labor into bill disputes creating a morass in the process because the language proposed in HB1176 HD1 does away with the checks and balances we've had in place for the past 20 years. It removes the procedures that the Department effectively uses to administer the bill dispute process and removes the pricing cap which currently limits price gouging. In addition it will actually increase the number of bill disputes the Department will have to administer 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 blue 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

HOUSE OF REPRESENTATIVES

H.B. NO.

1176
[Redlined
with
language
from
HAR 12-
15-94\(d\)](#)

TWENTY-SEVENTH LEGISLATURE, 2013
STATE OF HAWAII

A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 386-21, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The liability of the employer for medical care, services, and supplies shall be limited to the charges computed as set forth in this section. The director shall make determinations of the charges and adopt fee schedules based upon those determinations. Effective January 1, 1997, and for each succeeding calendar year thereafter, the charges shall not exceed one hundred ten per cent of fees prescribed in the Medicare Resource Based Relative Value Scale applicable to Hawaii as prepared by the United States Department of Health and Human Services, except as provided in this subsection. The 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.

If the director determines that an allowance under the medicare program is not reasonable or if a medical treatment, accommodation, product, or service existing as of June 29, 1995, is not covered under the medicare program, the director, at any time, may establish an additional fee schedule or schedules not exceeding the prevalent charge for fees for services actually received by providers of health care services, to cover charges for that treatment, accommodation, product, or service. If no prevalent charge for a fee for service has been established for a given service or procedure, the director shall adopt a reasonable rate which shall be the same for all providers of health care services to be paid for that service or procedure.

The director shall update the schedules required by this section every three years or annually, as required. The updates shall be based upon:

- (1) Future charges or additions prescribed in the Medicare Resource Based Relative Value Scale applicable to Hawaii as prepared by the United States Department of Health and Human Services; or
- (2) A statistically valid survey by the director of prevalent charges for fees for services actually received by providers of health care services or based

upon the information provided to the director by the appropriate state agency having access to prevalent charges for medical fee information.

~~[When a dispute exists between an insurer or self-insured employer and a medical services provider regarding the amount of a fee for medical services, the director may resolve the dispute in a summary manner as the director may prescribe; provided that a provider shall not charge more than the provider's private patient charge for the service rendered.]~~ (This language should not be struck)

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In the event a reasonable disagreement relating to specific charges cannot be resolved, the employer or provider of service may request intervention from the director by notifying the director and the other party by certified mail of the billing dispute. The front page of the billing dispute and the envelope in which the dispute is mailed shall be clearly identified as a "BILLING DISPUTE" in capital letters and in no less than ten point type. The Director shall send the parties a notice and the
~~The~~ parties shall negotiate within thirty-one calendar days following the date of the notice sent ~~to~~ by the director ~~and other party~~. If the parties fail to reach an agreement during the thirty-one calendar days, either party may file a request, in writing, to the director to review the dispute with notice to the other party. The Director shall send the parties a second

notice requesting the parties shall-- file their position statements within fourteen calendar days following the date of the second notice from the director. by certified mail within fourteen calendar days- immediately following the thirty-first day of the negotiation period-. The position statements shall include substantiating documentation that specifies the amount in dispute, any applicable supporting documents, and a description of actions taken to resolve the dispute. The director shall review the position statements submitted by both parties and render an administrative decision without a hearing. A service fee of up to \$500 payable to the State of Hawaii general fund shall be assessed at the discretion of the director against either or both parties who fail to negotiate in good faith. ~~The administrative decision rendered by the director shall be final and shall not be subject to appeal-~~ (disallowed by the intermediate Court of Appeals. Refer to Jou vs. Hamada).

When a dispute exists between an employee and the employer or the employer's insurer regarding the proposed treatment plan or whether medical services should be continued, the employee shall continue to receive essential medical services prescribed by the treating physician necessary to prevent deterioration of the employee's condition or further injury until the director issues a decision on whether the employee's medical treatment

should be continued. The director shall make a decision within thirty days of the filing of a dispute. If the director determines that medical services pursuant to the treatment plan should be or should have been discontinued, the director shall designate the date after which medical services for that treatment plan are denied. The employer or the employer's insurer may recover from the employee's personal health care provider qualified pursuant to section 386-27, or from any other appropriate occupational or non-occupational insurer, all the sums paid for medical services rendered after the date designated by the director. Under no circumstances shall the employee be charged for the disallowed services, unless the services were obtained in violation of section 386-98. The attending physician, employee, employer, or insurance carrier may request in writing that the director review the denial of the treatment plan or the continuation of medical services."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

INTRODUCED BY: _____

BUSINESS INSURANCE.

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Sheena Harrison

Florida's workers comp medical reimbursement disputes up fourfold

January 28, 2013 - 3:36pm

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[What's This?](#)

Florida saw a nearly fourfold increase in medical reimbursement disputes for workers compensation cases in its most recent fiscal year, driven largely by reimbursement petitions for physician-dispensed prescription medications, according to the Florida Department of Financial Services Division of Workers' Compensation.

That finding was discussed this month in a biennial report on the state of Florida's workers comp system, issued by a three-member panel of the state workers comp division. The Florida workers comp division includes an Office of Medical Services that resolves medical reimbursement disputes between insurers and health practitioners.

The division's report shows that there were 15,000 medical reimbursement petitions submitted by health care providers to the state workers comp division in fiscal 2011-12. That's compared with 3,777 petitions filed in fiscal 2010-11.

Reimbursement dispute petitions from practitioners increased to 12,718 last year, up from 1,308 in fiscal 2010-11. The panel report said that most of those petitions included disputes over physician-dispensed or "repackaged" medications.

In its report, the workers comp panel said Florida lawmakers could help reduce reimbursement disputes by passing legislation to limit price differences between repackaged drugs and non-repackaged prescriptions.

The panel also recommended increasing time limits for insurers to respond to medical reimbursement dispute petitions, partly to allow time for insurers and health care providers to negotiate reimbursement outside of the dispute resolution process.

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FINTestimony

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From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 21, 2013 1:37 PM
To: FINTestimony
Cc: regoa@hawaii.rr.com
Subject: Submitted testimony for HB1176 on Feb 21, 2013 16:00PM

HB1176

Submitted on: 2/21/2013

Testimony for FIN on Feb 21, 2013 16:00PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
ANSON REGO	Individual	Support	No

Comments: HB 152 is a critical bill to increase fees of medical providers from 110% to 130%. Injured workers need more doctors and maintain the underpaid ones in the system. ANSON REGO ATTORNEY

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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