

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

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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 (DLIR)

**Re: H.B. No. 152, H.D. 1 Relating to Workers' Compensation Fee Schedules**

**I. OVERVIEW OF PROPOSED LEGISLATION**

HB152, HD1, proposes to amend section 386-21, Hawaii Revised Statutes (HRS), by increasing the charges for medical care, services and supplies to not exceed one hundred thirty (130%) percent of fees prescribed in the Medicare Resources Based Relative Value Scale system applicable to Hawaii, effective January 1, 2113.

The department favors immediate relief in the form of a percentage increase over the Medicare Resource Based Relative Value Scale as this is consistent with the intent of the statute that states in part, "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." §386-21.

The insufficient reimbursement for the services and care of injured workers contributes to the shortage of doctors and healthcare service providers in many areas of the state, especially in rural areas.

The department strongly supports this measure and suggests the Committee consider amending the definition of Medical Fee Schedule in section 431:10C-103, HRS to avoid an unintentional raise in motor vehicle premiums. Recommended language appears in the Comments Section below should the Committee choose

to amend the measure.

**II. CURRENT LAW**

Section 386-21, HRS, allows for charges for medical care, services and supplies to not exceed one hundred ten percent (110%) of fees prescribed in the Medicare Resource Based Relative Value Scale system applicable to Hawaii.

Section 386-21, HRS, also allows the director to increase fees for specific services if the fees provided under Medicare are not reasonable. The Department may adjust reimbursement rates through Exhibit A of the Workers' Compensation Medical Fee Schedule Administrative Rules when surveys indicate that Medicare plus 10% is not sufficient reimbursement for health care treatment.

**III. COMMENTS ON THE SENATE BILL**

1. ACT 234, effective June 29, 1995, amended Section 386-21 to provide that charges for services shall not exceed 110% of Medicare Resource Based Relative Value Scale system. Over time, the reimbursement rates of providers have failed to keep pace with the higher costs of medical care, leading some physicians to opt out of providing treatment to injured workers in the workers' compensation system.

**Hawaii Medical Fee Supplemental Schedule Average & Change in CPT<sup>1</sup> 1995-2012<sup>2</sup>**

CPT Sections	1995 Medicare Average	2012 Medicare Average	Percentage Change	CPI-U <sup>3</sup> Change 1995-2011	CPI-U Medical Costs <sup>4</sup> 1995-2011
Surgery	\$522.38	\$548.17	5%	<b>+45%</b>	<b>+55%</b>
Radiology	\$208.60	\$171.00	-18%		
Medicine	\$178.89	\$133.62	-25%		
Eval & Mgmt	\$50.07	\$51.92	4%		
All CPT	\$355.25	\$347.36	-2%		

<sup>1</sup> Current Procedural Terminology

<sup>2</sup> Data by DLIR's Research and Statistics Office

<sup>3</sup> Consumer Price Index, Bureau of Labor Statistics (BLS), U.S. Department of Labor (USDOL)

<sup>4</sup> Consumer Price Index, Medical Care Costs Only, BLS, U.S. DOL

- The U.S. Department of Labor's Office of Workers' Compensation Program Medical Fee Schedule (OWCP) conversion factor (CF) for Hawaii was **143%** of Medicare in 2012, illustrating the need to increase charges beyond the 110% currently allowable. The 2013 Medicare and OWCP conversion factors are due to be released in May 2013.

**Comparison of Medicare and OWCP Conversion Factors**  
**2002-2012**

Year	Medicare CF	OWCP <sup>1</sup> CF	OWCP CF % over Medicare CF
2002	\$36.20	\$48.32	33.5%
2003	\$36.79	\$49.10	33.5%
2004	\$37.34	\$49.84	33.5%
2005	\$37.90	\$50.58	33.5%
2006	\$37.90	\$50.58	33.5%
2007	\$37.90	\$51.60	36.2%
2008	\$38.09	\$51.86	36.2%
2009	\$36.07	\$53.10	47.2%
2010	\$36.87	\$53.10	44.0%
2011	\$33.98	\$48.52	42.8%
2012	\$34.04	\$48.52	<b>42.5%</b>

<sup>1</sup> U.S. Department of Labor, Office of Workers' Compensation Programs (OWCP) Medical Fee Schedule conversion factor used for only those medical services with a Relative Value Unit (RVU).

**Conversion Factor (CF)** – The conversion factor converts the relative value units into an actual dollar amount. The dollar multiplier (CF) is updated on an annual basis. For Medicare this factor is according to a formula specified by statute. The OWCP devises its own conversion factors (CF) based on program-specific data, and national billing data from other federal programs, state workers' compensation programs and the U. S. Department of Labor's Bureau of Labor Statistics consumer price index (CPI) data.

- The Department is aware that any increase in reimbursement to medical providers may result in additional cost and higher insurance fee premiums for employers. The Department notes that from 2005 - 2013, Workers' Compensation premium levels have cumulatively decreased by over 50% (see chart below). This trend of decreasing premiums may be reversing, however,

as evidenced by the slight rise in premium costs last year and the approval by the Insurance Commissioner for a 5.2% increase this year. DLIR notes that an analysis by the National Council on Compensation Insurance estimated the impact of increasing the reimbursement rate to 130% in 2014 would increase medical costs by 5.7% and overall costs in the workers' compensation system by 3%, or \$5.7 million.

Year	Premium Level Change (%)
2005	-3.0
2006	-18.2
2007	-12.3
2007	3.9
2008	-19.3
2009	-11.6
2010	-4.1
2011	0.0
2012	3.6
2013	5.2
<b>Total Decrease: 55.8%</b>	

4. The recommended amendment to avoid an unintentional raise in motor vehicle premiums referred to in the Overview Section above amends section 431:10C-103, HRS by amending the definition of "medical fee schedule" to read as follows:

"Medical fee schedule refers to one hundred ten per cent of the fees prescribed in the Medicare Resource Based Relative Value Scale System applicable to Hawaii, entitled "Workers' Compensation Supplemental Fee Schedule"."

5. The Department believes a reimbursement of 110% of Medicare to medical providers who treat injured workers is inadequate. The Department, however, notes 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 raised to 130% of Medicare.

The Department can and has adjusted reimbursement rates based upon surveys of prevalent charges when the surveys indicated reimbursement rates were higher than Medicare. Changes to reimbursement rates are made to the Department's Supplemental Fee Schedule known as Exhibit A of the Medical Fee Schedule Administrative rules. The Department is currently in the process of updating parts of the Medical Fee Schedule.

The provision for a medical fee schedule in 386-21, HRS, permits the Director to adjust allowances for medical costs if the reimbursement rate is either not reasonable or not covered under the Medicare Resource Based Relative Value Scale System applicable to Hawaii. However, the Department does not believe the Legislature intended the Director to make a determination about the allowances of all 10,000 plus codes in the Medicare system. Moreover, the Department does not have either the medical expertise to make those decisions or the resources to undertake a survey of the 10,000 plus codes in the Medicare Resource Based Relative Value Scale system.

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. 152, H.D. 1**  
**Relating to Workers' Compensation Medical Fee Schedules**

TO CHAIRPERSON SYLVIA LUKE AND MEMBERS OF THE COMMITTEE:

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

The purpose of H.B. 152, H.D. 1, is to increase maximum allowable medical fees under workers' compensation to 130 percent of the Medicare Resource Based Relative Value Scale, effective January 1, 2013.

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 appreciates the intent of this bill, but is concerned about its significant cost implications on State funds appropriated for workers' compensation.**

We are aware that more physicians and medical providers are opting not to accept workers' compensation patients due to a variety of factors, including the limits on payments allowed under the statute and the administrative burdens of providing treatment to a claimant. This bill would provide a financial incentive for more providers to accept claimants as patients. We believe that having more physicians and medical

providers participating in workers' compensation would lead to more choices, better quality, and more timely provision of services to our injured workers.

However, the fiscal impact of the proposed 18% increase in the reimbursement for medical care, services, and supplies that fall under the Medicare fee schedule will be significant. Over the years, medical care has by far been the most expensive cost item in our workers' compensation program, consistently averaging at least 40% of our total costs. An across-the-board increase for services that fall under the Medicare fee schedule will drive our medical costs higher and will likely require an even greater increase in our HRD102 general fund appropriation to pay claims under Chapter 386. Since our WC allocation has remained unchanged at \$6,190,183 for several years, DHRD's budget request for the next fiscal biennium already requests an increase of \$457,000 for FY14 and \$545,000 for FY15 to cover additional anticipated costs, even without taking into account an 18% increase in the fee schedule. As applied to the \$2.6 million spent on medical costs in FY 2012, the proposed increase in medical expenses resulting from this bill would be \$468,000 annually.

Finally, we share the concern raised by the Director of the Department of Labor and Industrial Relations (Director) in his January 28, 2013 testimony to the House Committee on Labor and Public Employment on H.B. 152 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 raised to 130% of Medicare." Section 386-21, HRS, authorizes the Director to issue a supplemental fee schedule if the director determines that an allowance for a specific service under Medicare is not reasonable. In that regard, and as a fiscally responsible alternative to an across-the-board increase in the fee schedule, we urge this committee to allow the Director to complete DLIR's process of updating parts of the WCMFS by adjusting reimbursement rates based upon surveys of prevalent charges.



NEIL ABERCROMBIE  
GOVERNOR

SHAN S. TSUTSUI  
LT. GOVERNOR

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KEALI' I S. LOPEZ  
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI  
DEPUTY DIRECTOR

TO THE HOUSE COMMITTEE ON FINANCE

TWENTY-SEVENTH LEGISLATURE  
Regular Session of 2013

Thursday, February 21, 2013  
4 p.m.

**WRITTEN TESTIMONY ONLY**

**TESTIMONY ON HOUSE BILL NO. 152, H.D. 1 – RELATING TO WORKERS' COMPENSATION MEDICAL FEE SCHEDULES.**

TO THE HONORABLE SYLVIA LUKE, CHAIR, AND MEMBERS OF THE COMMITTEE:

My name is Gordon Ito, State Insurance Commissioner ("Commissioner"), testifying on behalf of the Department of Commerce and Consumer Affairs ("Department").

The Department takes no position on this bill and submits the following comments.

The purpose of this bill is to amend Hawaii Revised Statutes ("HRS") § 386-21(c) by increasing the fee schedule of compensation for medical care, services, and supplies in workers' compensation cases from 110 to 130 percent of the Medicare Resource Based Relative Value Scale applicable to Hawaii, as prepared by the U.S. Department of Health and Human Services ("Medicare fee schedule").

The intent of this bill is to improve access and availability of medical providers to treat workers' compensation claimants. The Department notes that this bill will also likely result in an increase in workers compensation insurance premiums and may impact motor vehicle insurance rates.



Under current law, the fee schedule for motor vehicle insurance cases are tied to the workers' compensation supplemental fee schedule, per HRS § 431:10C-308.5. This was intended to reduce motor vehicle insurance premiums and to provide administrative efficiency.

We thank this Committee for the opportunity to present testimony on this matter.

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

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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 St.  
Honolulu, Hawaii 96813

Dear Chair Luke and Members:

Subject: House Bill No. 152, HD1, Relating to Workers' Compensation  
Medical Fees Schedules

The Department of Human Resources opposes House Bill No. 152, H.D. 1, amending Section 386-21 (c), Hawaii Revised Statutes (HRS), by increasing the reimbursement rate for medical providers to 130% of the Medicare Resource Based Relative Value Scale for Hawaii. In 1995, the Legislature amended this section of the law to reduce excessive reimbursement rates and establish a comprehensive, nationally recognized system of charges. The law further established procedures for the Director of the Department of Labor and Industrial Relations to adjust the schedule to ensure reasonable allowances for reimbursement.

We respectfully urge your committee to file House Bill No. 152, H.D. 1. We do not believe that there is a need to change the reimbursement rate for the entire workers' compensation medical fee schedule by any amount. With proper justification from the medical community, the Director of Labor and Industrial Relations, under Section 386-21 (c), HRS, can increase allowances for medical care and services that are not considered reasonable or adequate.

Thank you for the opportunity to testify.

Sincerely,

Handwritten signature of Carolee C. Kubo in black ink.

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**

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

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

The Chamber of Commerce of Hawaii ("The Chamber") **opposes** HB 152 HD 1 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 has concerns that the increase in the medical fee schedule from 110% to 130% of Medicare will raise workers' compensation costs and increase premiums paid by business.

The economic recovery is still fragile for many businesses and this will add an increased cost for business.

Thank you for this opportunity to express our views.

## TESTIMONY OF ALISON POWERS

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HOUSE COMMITTEE ON FINANCE  
Representative Sylvia Luke, Chair  
Representative Scott Y. Nishimoto, Vice Chair

February 21, 2013  
4:00 p.m.

### **HB 152, HD1**

Chair Luke, Vice Chair Nishimoto, and members of the Committee, my name is Alison Powers, Executive Director of the Hawaii Insurers Council. Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately 40% of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **opposes** HB 152, HD1. This bill increases the medical fee schedule reimbursement from 110% of Medicare to 130% of Medicare. We believe this bill is unnecessary because both the Director of the Department of Labor and Industrial Relations and the Insurance Commissioner have the ability to increase reimbursements. In fact, in 2006, the Department of Labor and Industrial Relations adjusted fees for approximately 1,300 CPT codes. The National Council on Compensation Insurance (NCCI) has recently estimated that a similar bill from 2012 would increase workers' compensation costs by 3.4% overall or \$6.2 million (see attached).

For the past several years, workers' compensation premiums have dropped dramatically, to around 50% of what they were a few years ago. However, the trend has changed and loss costs are increasing. The Insurance Commissioner approved a 3.6% loss cost increase effective January 1, 2012 and another loss cost increase of 5.2% effective January 1, 2013. This means that pure losses for workers' compensation are

increasing and there are premiums are increasing. This bill will add costs to a system where decreasing trends are over.

In addition, an across the board increase will adversely affect motor vehicle insurance costs. While the initial increase to personal injury protection (PIP) coverage may be small, PIP costs will drive higher bodily injury liability costs, uninsured motorist coverage costs, and uninsured motorist costs.

For these reasons, we respectfully request that HB 152, HD1 be held.

Thank you for the opportunity to testify.

**finance1-Christie**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 19, 2013 4:37 PM  
**To:** FINTestimony  
**Cc:** bolger55@gmail.com  
**Subject:** Submitted testimony for HB152 on Feb 21, 2013 16:00PM

**HB152**

Submitted on: 2/19/2013

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

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Douglas Moore	Hawaii Injured Workers Association	Support	No

Comments: strong support of the medical providers who take care of and rehabilitate our injured workers so that they can get back to work asap

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

COMMITTEE ON FINANCE

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

Date: Thursday, February 21, 2013

Time: 4:00 p.m.

Place: Conference Room 308, State Capitol

TESTIMONY OF ILWU LOCAL 142 RE: HB 152, HD 1.  
RELATING TO WORKERS' COMPENSATION MEDICAL FEE SCHEDULES

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

Thank you for the opportunity to present testimony re: HB 152, HD 1. We support this useful and constructive measure.

Access to quality medical care is perhaps the single most important factor in the successful functioning of our workers' compensation system. Effective medical care enables injured workers to resume productive lives or to make the necessary adaptations to transition to other occupations. Sound medical treatment also permits employers and insurers to minimize their expenses in paying for lengthy temporary or permanent disability.

At present, effective medical care is not available to all injured workers because the level of compensation received by those physicians willing to take workers' compensation is below that paid for regular prepaid health insurance. When the lower rate of reimbursement is coupled with administrative requirements for claims documentation and the added time this entails, many medical providers are simply refusing to accept workers' compensation patients. This problem is often most acute on the neighbor islands, where health care providers, especially in certain medical subspecialties like neurology and neurosurgery is limited or non-existent.

The result is that injured workers then can go untreated or cannot access quality medical care. Our best and busiest physicians can build successful practices without workers' compensation patients, and thus they are often the least available to care for injured workers.

HB 152, HD 1 would go far to correct the inadequate compensation of medical providers in the workers' compensation arena by increasing the base for compensation from 110 percent to 130 percent of the Medicare Resource Based Relative Value Scale.

Significant adjustments in medical care compensation have rarely been made, and thus, enhancement is justified merely to keep pace with inflation, if for no other reason. It is also vital to recognize that overall insurance premium costs for workers' compensation have declined 69% between 2005-2010, according to statistics provided by the Director of the Department of Labor and Industrial Relations in testimony on March 20, 2012 before the Senate Committee on Health regarding HB 2152, HD 2, a proposal to achieve a similar medical fee increase. Thus, an increase of less than one-third of this decline should not be viewed as overly generous.

By approving HB 152, HD 1 the legislature will not only increase the availability of quality medical care, but in the long run will ensure a more stable and economical system of workers' compensation medical coverage, and we therefore urge its passage.





Randy Perreira  
President

# HAWAII STATE AFL-CIO

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The Twenty-Seventh Legislature, State of Hawaii  
House of Representatives  
Committee on Finance

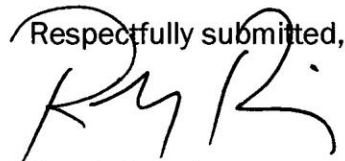
Testimony by  
Hawaii State AFL-CIO  
February 21, 2013

H.B. 152, HD1 – RELATING TO WORKERS'  
COMPENSATION

The Hawaii State AFL-CIO supports H.B. 152, HD1 which increases maximum allowable medical fees under workers' compensation to 130 percent of the Medicare Resource Based Relative Value Scale.

We believe it is important to encourage more physicians to accept workers' compensation patients. Unfortunately, the current reimbursement rates result in fewer doctors willing to accept them. An increase to 130 percent would hopefully boost the number of doctors willing to examine and treat injured workers.

Thank you for the opportunity to testify.

Respectfully submitted,  
  
Randy Perreira  
President



House Committee on Finance  
Thursday, February 21, 2013  
4:00 PM  
Room 308

RE: HB 152, HD1 Related to Workers' Compensation Medical Fee Schedules

Dear Honorable Chair Luke, Vice Chair Nishimoto, Vice Chair Johanson and members of the House Committee on Labor & Public Employment. On behalf of the Hawaii Chapter, American Physical Therapy Association (HAPTA), we are in **STRONG SUPPORT** of HB152, HD1 related to workers' compensation medical fee schedules.

Injured workers in Hawaii are having increasing difficulty accessing medical care. Many physicians no longer accept workers' compensation patients. Although no formal survey has been done, estimates are that more than 80% of physicians in Hawaii no longer see workers' compensation patients. The few physicians that accept workers' compensation patients often have a long waitlist to get an appointment. This access to care problem delays treatment, and formal studies have shown that reduction in the time it takes to receive treatment improves a patient's outcome and prognosis. Therefore, improving access to care may expedite a patient's return to work and reduce long term cost to insurers.

We believe that the proposed increase in the fee schedule from 110 percent to 130 percent of the Medicare Resource Based Relative Value Scale is an important step toward a more comprehensive solution to the issues affecting physician acceptance of workers' compensation patients.

HAPTA is a non-profit professional organization serving more than 250 member Physical Therapists and Physical Therapist Assistants. Our mission is to be the principal membership organization that represents and promotes the profession of Physical Therapy in the State of Hawaii.

Mahalo,

Elyse Nakama, PT  
Legislative Committee Member



Property Casualty Insurers  
Association of America

Advocacy. Leadership. Results.

To: The Honorable Sylvia Luke, Chair  
House Committee on Finance

From: Mark Sektnan, Vice President

Re: **HB 152 HD1 – Workers’ Compensation Medical Fee Schedules**  
**PCI Position: OPPOSE**

Date: Thursday, February 21, 2013  
**Agenda #3**; 4:00 PM; Conference room 308

Aloha Chair Luke and Members of the Committee:

The Property Casualty Insurers Association of America (PCI) is opposed to HB 152 HD1 which would increase 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.

PCI believes this bill is unnecessary. 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 hold this bill in committee.

HOUSE COMMITTEE ON FINANCE  
Rep. Sylvia Luke, Chair

February 21, 2013 at 4:00 p.m.  
Conference Room 308

**Supporting with an amendment HB 152 HD 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, as well as long term care facilities, home care agencies, and hospices. In addition to providing quality care to all of Hawaii's residents, our members contribute significantly to Hawaii's economy by employing over 40,000 people. Thank you for this opportunity to comment on HB 152 HD1, 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.

Hawaii's workers' compensation law was established to ensure that employees injured in the course of employment receive wage replacement and medical benefits in exchange for the right to sue the employer for negligence. The workers' compensation law requires that payments to health care providers are adequate. However, due to low payments to health care providers under the workers' compensation law, many injured employees do not have ready access to health care. For example, many physicians decline to take workers' compensation patients because payments are insufficient. This bill improves access to health care by allowing payments for health care to increase.

While we support the bill, we would like to suggest an amendment. The Medicare Resource Based Relative Value Scale that is referenced in Section 386-21, HRS, which this bill proposes to amend, refers only to payments to physicians. It should not be applied to facility-based providers, such as hospitals and nursing facilities, because of their different cost structures and service lines. In order to be comprehensive, Section 386-21, HRS, should include payments to all types of health care providers. Instead of citing the Medicare Resource Based Relative Value Scale, the bill should be amended to cite the following Medicare fee schedules in Section 386-21, HRS, to which the 130% should apply:

- (1) Hospital Inpatient MS-DRG Reimbursement Fee Schedule
- (2) Hospital Outpatient and ASC Fee Schedule Organized by APC
- (3) Hospital Outpatient and ASC Fee Schedule Organized by CPT/HCPCS
- (4) Skilled Nursing Facility PPS Fee Schedule
- (5) Clinical Laboratory Fee Schedule
- (6) Durable Medical Equipment, Prosthetics/Orthotics, and Supplies Fee Schedule
- (7) Inpatient Rehabilitation Facility PPS Fee Schedule
- (8) Physician Fee Schedule

With the suggested amendment, the Healthcare Association of Hawaii supports HB 152 HD 1.



## HAWAII MEDICAL ASSOCIATION

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Phone (808) 536-7702 Fax (808) 528-2376 www.hmaonline.net

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

To:

COMMITTEE ON FINANCE

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

From: Hawaii Medical Association

Dr. Steven Kemble, MD, President  
Dr. Linda Rasmussen, MD, Legislative Co-Chair  
Dr. Joseph Zobian, MD, Legislative Co-Chair  
Dr. Christopher Flanders, DO, Executive Director  
Lauren Zirbel, Community and Government Relations

Re: HB 152 RELATING TO WORKERS' COMPENSATION MEDICAL FEE SCHEDULES

Position: Strongly Support

Dear Chair Nakashima, Vice Chair Hashem and the House Committee on Labor and Public Employment Members:

The Hawaii Medical Association is submitting testimony in strong support of HB 152.

In 1995, a comprehensive package of legislative proposals was made to reform workers' compensation in response to rising insurance premiums. The Legislature couldn't agree on the more fair and meaningful reforms, so the medical fee schedule was arbitrarily slashed by 54%, basing reimbursement on Medicare plus 10%. Hawaii's medical fee schedule fell to fifth lowest in the nation, 18% below the national median. Counter-intuitively, costs per case continued to rise and soon exceeded pre-1995 levels.

The probable reason for this is the impact that inadequate reimbursement had on restricting access to care. A critical element in treating workers' compensation cases is immediate access to comprehensive medical care and management. Any delays tend to

### OFFICERS

**PRESIDENT - STEPHEN KEMBLE, MD    PRESIDENT-ELECT - WALTON SHIM, MD**  
**SECRETARY - THOMAS KOSASA, MD    IMMEDIATE PAST PRESIDENT - ROGER KIMURA, MD**  
**TREASURER - BRANDON LEE, MD    EXECUTIVE DIRECTOR - CHRISTOPHER FLANDERS, DO**

make the injury more costly, even to the extent of permanent impairments and disabilities. This also affects the time period the employee is off work, creating greater costs to employers for temporary disability payments.

The legislature must recognize that the practice of medicine is also a business and therefore follows the same economic rules under which any business operates. In short, no business or profession can exist if they are forced to take a loss on sales or services. Predictably, there has been a steady exodus of physicians willing to treat injured workers. Because no-fault automobile injuries are reimbursed according to the workers' compensation fee schedule, these patients also have been having an increasingly difficult time receiving care for their injuries. The situation has finally reached crisis proportion as demonstrated by a Hawaii Medical Association survey indicating that over 65% of doctors that had previously taken these cases now refuse to do so. It is now extremely common that physicians refuse care of these injuries even to their established patients. Straub Hospital and Clinic is perhaps the largest example of this.

We have come to the legislature regularly to correct this problem since Act 234 was passed in 1995 asking for recognition that injured workers and their families are suffering as a result of low reimbursements impeding access to medical care. We hope that now the legislature finally understands this to be true and takes action to correct the situation.

Mahalo for the opportunity to submit testimony on this important issue.

Testimony of  
John M. Kirimitsu  
Legal & Government Relations Consultant

Before:

House Committee on Finance  
The Honorable Sylvia Luke, Chair  
The Honorable Scott Y. Nishimoto, Vice Chair

February 21, 2013  
4:00 pm  
Conference Room 308

**Re: HB 152, HD1 - Relating to Workers' Compensation**

Chair, Vice Chair, and committee members, thank you for this opportunity to provide testimony on HB 152, HD1, providing for an increase in the fee schedule for medical services in workers' compensation cases.

**Kaiser Permanente Hawaii supports this bill.**

Basing the medical fee schedule on the Medicare RBRVS began in 1995, and to date, the payments to health care providers has remain unchanged at 110% of Medicare RBRVS. Therefore, this bill's proposed increase to 130% is long overdue.

This issue of increasing the medical services reimbursement for workers' compensation cases has a long standing history before the Hawaii legislature. In 1998, the Hawaii legislature requested a study to determine if the 110% ceiling on the workers' compensation medical fee schedule based on the Medicare-RBRVS should be adjusted. In that study, the Legislative Reference Bureau recommended an increase in the 110% medical fee schedule, and attributed the low medical fee schedule for the trend in health care providers not accepting new patients for workers' compensation cases. The complete Legislative Reference Bureau report and its findings may be viewed at <http://hawaii.gov/lrb/rpts98/fee.pdf>.

Traditionally, workers' compensation fee schedules do not properly recognize and reimburse physicians who go beyond traditional medical services and perform the extra work required to promote an employee's rapid return to work. It is well documented that workers' compensation cases require more physician time in caring for and educating the patient, increasing the cost of delivering workers' compensation services compared with routine health care. As a result, low

fee schedules can discourage the participation of qualified physicians and have a consequential negative impact on access through a reduction of available physicians. On the other hand, an appropriate fee schedule promotes the development of quality occupational health programs and services, which in turn ensures higher quality of health care and increased access to injured workers without passing on higher costs to employers and insurers.

Thank you for the opportunity to comment.



TESTIMONY BEFORE THE  
COMMITTEE ON FINANCE

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

HB 152, 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. 152, HD1.** Our companies represent over 2,000 employees throughout the State.

This bill proposes to amend Section 386-21, HRS increasing the fee schedule of compensation for medical care in workers' compensation cases from 110% to 130% of the Medicare Resource Based Relative Value Scale system applicable to Hawaii.

While we can appreciate the intent of the bill, we would not support an "across the board" increase in allowable charges as proposed. The existing statutes have a process in place to allow the Director of the DLIR to create an additional fee schedule, or adjust the allowable fees at any time. A majority of health care providers are already compensated adequately for their services. The statutes allow health care providers to submit proposals, with supporting evidence, to the Director to review and determine if a change to their reimbursement rate is warranted.

We recognize that reimbursement rates may have discouraged physicians in some medical specialty areas to treat both work-related injuries, and motor vehicle injuries, since they both use the same medical fee schedules. However, any increase in the reimbursement rate to health care providers will have an equivalent increase to costs for employers and consumers with higher motor vehicle insurance premiums.

We suggest that a study be done to examine the scope of the issues raised and adequacy of workers' compensation reimbursements in Hawaii to ensure healthcare providers are adequately compensated.

For these reasons, we respectfully oppose H.B. 152, HD1 and request that this measure be held.

Thank you for this opportunity to submit testimony.

# 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 152, HD1 Relating to Workers' Compensation Medical Fee Schedules  
Strong Support**

Thank you for allowing me to submit testimony on HB 152, HD 1. During my prior testimony, which is attached, I highlighted some of the more draconian burdens medical providers have been facing. See enclosure. As a result, we have a lack of access to quality medical care, which is particularly acute on the neighbor islands, and even Oahu.

This is aptly illustrated in an interview with an injured worker on Oahu just last week. The injured worker's primary care physician made it clear that he would not treat her under the workers' compensation system. This was disheartening, and she proceeded to place all treatment under her private medical plan. Recently, she learned that her condition may be far worse and need critical medical care, including surgery. She may be unable to work, too. This is a common occurrence confronting injured workers because there is no true access to quality medical providers.

As I have testified repeatedly, it is vital for the Legislature to rectify the crisis, which began in 1995, and the additional administrative burdens imposed on medical providers. Barriers are placed everywhere frustrating medical providers from accepting injured workers or remaining in the workers' compensation system. They are also challenged and required to take valuable time out to address the collection of their charges for medical services. All the while, the insurance industry has made increasing profits at the backs of the injured workers and those still dedicated to service them.

You will always hear the opposition claiming there will be an increase in premiums. Yet, we have one of the lowest premiums in the nation after the insurance carriers have earned record profits. There must be a balanced and sensible approach to the crisis in addressing the lack of access to quality medical care for injured workers. The Legislature can help by moving in to correct an injustice and the arbitrary inequities inherent in the workers' compensation system and make right the grand bargain struck for injured workers with the passage of the workers' compensation statute in 1915.

On a more personal note, consider what would happen to your family, friends, neighbors, and the like. Will they be forced into the situation that I have witnessed countless times over the years of putting their work injuries under their private plans which limit the amount of care allowed and payments of statutory entitlements including wage loss? Or, will they be sent off with a list of referrals of potential workers' compensation providers only to wait by the telephone for a return call, which never comes?

Without any hesitations, I wholeheartedly respectfully submit that the Legislature correct the wrong in the workers' compensation system. Injured workers need the passage of HB 152, HD1.

Again, I thank you very much for giving me the honor of testifying before you.

DWSC:ty

Enclosure: 1/28/13 Testimony

# 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

January 28, 2013

VIA ELECTRONIC MAIL

TO: Honorable Mark M. Nakashima, Chair  
Honorable Mark J. Hashem, Vice Chair  
Members of House Committee on Labor & Public Employment

DATE: January 29, 2013  
TIME: 9:00 a.m.  
PLACE: Conference Room 309, State Capitol

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

### **Re: HB 152 Relating to Workers' Compensation (Support for Passage of HB 152)**

#### **The Legislature Should Correct the Crisis**

Throughout the early years of my professional career there was an ongoing dialogue over whether medical providers were the "drivers" in the cost of doing business in the workers' compensation process. By the passage of Act 234, which became effective June 29, 1995, in one sweeping stroke, the Legislature amended Section 386-21 and reduced charges for vital medical services by 54% of previously authorized routine charges. Medical charges were capped at not more than 110% of the Medicare Resource Based Relative Value Scale system.

No credence was given to the concern that many medical providers would be unable to maintain their businesses to treat injured workers. Some involuntarily but drastically reduced the number of injured workers in their practices. Others were forced to stop treating injured workers altogether. The passage of Act 234 as the genesis of the lack of access to critical quality medical care for injured workers is undeniable. Emboldened, the administrative process was used to aggravate the crisis by imposing stringent rules on both medical providers and injured workers. Medical providers were

also required to spend a disproportionate amount of their time completing undue administrative paperwork and bureaucratic delay before they could treat injured workers unlike patients without work injuries.

Today, medical providers are required to submit detailed treatment plans, send onerous medical reports and provide regular justification for disability. They are required to wait for approval before starting or resuming vital medical care. No compensation are allowed for all time spent performing these burdensome administrative tasks, which do not apply to non work related patients. Instead, they could be used as disincentives to the delivery of quality medical care to injured workers and to deny billings for such medical care. Moreover, they must be redone and resubmitted at the behest of employers and insurance carriers or their representatives. Time and time again these administrative burdens result in lost and billable charges. To comply, medical providers must carefully study and master the requirements contained in the Medical Fee Schedule.

As one physician recently informed me, it is absurd that his treatment plan was one day off for the proposed period of treatment and his plan was the denied. Under the Medical Fee Schedule a treatment plan is allowed for a period of 120 days. Unfortunately, he submitted a treatment plan for four months. This resulted in plan covering a period of treatment for 121 days. The treatment plan was denied for precisely this reason even though there was clear substantial compliance. He was forced to resubmit a treatment plan containing a period of treatment for exactly only 120 days. Worse, by starting treatment, the insurance carrier could also deny his charges for *bona fide* medical care because his medical care, however essential, occurred under a treatment plan which was not approved.

Similarly, charges of medical providers are routinely disputed. To collect, they are required to file a request for a fee dispute with the Department of Labor and Industrial Relations ("Department"). Then, they must attempt to negotiate an informal resolution. Failure to engage in negotiations could result in getting fined. During negotiations they are unlikely to be paid their full allowable charges. If negotiations fail, they must attend a hearing to address their disputed charges. Most medical providers must, as a practical matter, accept whatever is negotiated because proceeding to a hearing inevitably means more lost time than the charges for the delivery of true critical medical care.

These and other onerous administrative burdens imposed upon medical providers and associated delay in the workers' compensation process prevent injured workers from accessing quality medical care. When faced with the dilemma having to wait for approval or providing essential medical care, they oftentimes follow the Hippocratic oath. Later, they confront a myriad of insurmountable administrative burdens resulting in the loss of valuable time.

We need a game changer beginning with the passage of HB 152 by allowing a nominal increase in compensating current dedicated medical providers. At the

minimum, it will encourage their small group to continue in the workers' compensation process. Hopefully, others may decide to participate in our dysfunctional workers' compensation system. Without doubt, passage of HB 152 would also allow injured workers better access to quality medical care. A member of the committee merely needs to pick up the telephone book and to call a few medical providers to verify that most of them refuse to treat injured workers.

I respectfully submit that members of the legislature should fully endorse the passage of HB 152. There is ample justification. Consider the arbitrary slashing of 54% of routine charges by the passage of Act 234 in 1995. Consider the fact that approximately 67% of premiums were reduced in recent years as confirmed by the Director in his testimony during the 2012 Legislative session based on data assembled by his Department. Consider the fact that the Medicare based system has failed to keep pace with medical costs.

As I previously testified last session, there is the total disconnect in the current workers' compensation system. Medical providers and injured workers should not be shouldering the costs of doing business as eloquently articulated in a long line of unwavering cases issued by the Hawai'i Supreme Court. Consistent with the underlying humanitarian purpose of the workers' compensation statute, the Court stated that the "costs of doing business" are unequivocally and rightfully imposed on employers in our great State.

Passage of HB 152 will not cure the woes of the remaining current medical providers and inequitable nightmares of injured workers who are in dire need of accessing quality medical care. Increasing charges a nominal amount from 110% to 130% is most proper, necessary and a small step in the right direction. I wholeheartedly respectfully request that all of you fully endorse the passage of HB 152 without any reservations.

DWSC:ty



Honorable Representative Sylvia Luke  
Chair, Committee on Finance

Honorable Representative Scott Nishimoto  
Vice-Chair, Committee on Finance

Honorable Aaron Ling Johanson  
Vice-Chair, Committee on Finance

RE: HB 152 – RELATING TO WORKERS’ COMPENSATION FEE SCHEDULE

Aloha Chair Luke and members of the committee,

InVision Imaging stands in **STRONG SUPPORT** of HB 152. In 1995, the legislature reformed the workers’ compensation fee schedule in response to rising insurance premium cost and cut reimbursements by 54%. Hawaii’s workers’ compensation medical fee schedule still remains to be that of the lowest in the nation. Those actions have adversely affected the medical community in Hawaii. Physicians are forced to limit their acceptance of patients and the quality of care given to a workers’ compensation patient is also negatively affected.

The current law allows for charges for medical care, services and supplies to not exceed one hundred ten percent (110%) of fees prescribed in the Medicare Resource Based Relative Value Scale System (MRBRVS). This proposal would raise the fee schedule to not exceed one hundred thirty percent (130%) of fees prescribed in the MRBRVS. The twenty percent (20%) increase will allow workers’ compensation patients to have better access to quality medical care for their injuries and a speedy recovery to return to work. The State’s no fault insurance fee schedule is linked to the workers’ compensation fee schedule, thus the same problem exists for physicians who provide services for no fault insurance patients.

I strongly urge the legislature to recognize that the practice of medicine is also a business. Hence, no business can survive if they are forced to take a cut in revenue. It has been over ten years since the current law for workers’ compensation has been revised. As the medical community in Hawaii advances in the technology era, fee schedules should reflect the existing need of medical costs which a provider incurs.

Thank you for the opportunity to submit testimony.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Hannum", written over a horizontal line.

Eric Hannum  
President

A handwritten signature in black ink, appearing to read "Chace Shigemasa", written over a horizontal line.

Chace Shigemasa  
Government Relations Representative