

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

THE SENATE
TWENTY-SEVENTH LEGISLATURE, 2013
STATE OF HAWAII

March 11, 2013

VIA ELECTRONIC MAIL

TO: The Honorable Clayton Hee, Chair
The Honorable Maile S. L. Shimabukuro, Vice Chair
and Members of the Senate Committee on Judiciary & Labor

DATE: Tuesday, March 12, 2013
TIME: 10:30 a.m.
PLACE: Conference Room 016, 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

Current Crisis

Medicare has not kept pace with the payment of medical providers in the workers' compensation (WC) process, resulting in their grave exodus since 1995. Ironically, since the overhaul in 1995 for reform, reduced premiums with major profits has resulted for insurance carriers to the detriment of a minority of medical providers and the outrageous hardship on injured workers. As I have repeatedly testified, aside from keeping medical providers from leaving there is a need to have an incentive to attract new ones to replace the "old guard" who have dedicated their careers to treating injured workers. Draconian burdens in the form of tedious administrative paperwork have made it even harder for medical providers to remain in the WC process. Our problem is more particularly acute on the neighbor islands where there is essentially little access to medical care. Time is long overdue to provide some relief as the Director of Labor and Industrial Relations has verified.

DILLINGHAM TRANSPORTATION BUILDING

Strongly Supporting Passage

There is ample justification that need not be repeated for the passage of this vital bill at this time. Since 1995, medical providers and consequently injured workers have been on the short end of the stick. Access to quality medical care has been denied to many injured workers. Proponents have repeatedly showed that injured workers are placing their work injuries on their private medical plans because doctors are unwilling to treat them under the WC process. That alone should speak volumes of the broken promise when the "Grand Bargain" was enacted in 1915 stripping injured workers of their right to sue and guaranteeing prompt payment of wage loss and access to quality medical care. In this regard, I incorporate my prior testimony.

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 WC system and make right the bargain struck for injured workers with the passage of the WC statute in 1915.

As I have stated candidly, 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 injured workers putting their work injuries under their private medical 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 WC providers only to wait by the telephone for a return call, which never comes?

I can in good conscience state that we have a crisis that passage of HB 152, HD 1, will ameliorate, in part, for injured workers after practicing for 36 years in the WC field. The statistics are all there to back up the immediate passage of this essential bill.

Conclusion

Without any hesitations, I wholeheartedly respectfully submit that the Legislature correct the wrong in the WC 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



**Testimony to the Senate Committee on Judiciary and Labor
Tuesday, March 12, 2013 at 10:30 A.M.
Conference Room 016, State Capitol**

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

Chair Hee, Vice Chair Shimabukuro, 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.

Honorable Senator Clayton Hee
Chair, Committee on Judiciary and Labor

Honorable Senator Maile S.L. Shimabukuro
Vice-Chair, Committee on Judiciary and Labor

RE: HB 152, HD 1—RELATING TO WORKERS' COMPENSATION FEE SCHEDULE

Aloha Chair Hee and members of the committee,

InVision Imaging stands in **STRONG SUPPORT** of HB 152 HD 1. 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,

Handwritten signature of Eric Hannum.

Eric Hannum
President

Handwritten signature of Chace Shigemasa.

Chace Shigemasa
Government Relations Representative

hee2 - Kathleen

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 11, 2013 3:13 PM
To: JDLTestimony
Cc: Lardizabal@local368.org
Subject: *Submitted testimony for HB152 on Mar 12, 2013 10:30AM*

HB152

Submitted on: 3/11/2013

Testimony for JDL on Mar 12, 2013 10:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Al Lardizabal	Hawaii Laborers' Union	Support	No

Comments:

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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**Hawaii Injured Workers Association
(HIWA)
715 S. King Street, Suite 410
Honolulu, HI 96813
(808) 538-9771**

March 10, 2013

TO: The Honorable Clayton Hee, Chair
Senate Committee on Judiciary and Labor

RE: Committee Hearing
Tuesday, March 12, 2013; 10:30 a.m.
State Capitol, Conference Room 016

H.B. 152, HD1, Relating to Workers' Compensation Medical Fee Schedules

The Hawaii Injured Workers Association (HIWA) strongly 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. HIWA is a tax-exempt, nonprofit organization whose mission is to educate and assist workers who are injured on the job.

Current fees are set at 110 percent of Medicare and have been set at that level for more than 15 years. At the time, the change to tie the fee schedule to 110% of Medicare seemed to make sense and resulted in the desired effect of reducing workers' compensation insurance premiums. However, since then, Medicare fees have declined and providers accepting injured workers as patients are seeing their reimbursements for treatment drastically reduced.

The result is that far fewer providers are accepting workers' compensation cases, particularly on the neighbor islands where medical provider shortages are well-documented. Anecdotally, we know of injured workers who contact many, many doctors before finding even one willing to treat their work-related injuries—or, not finding a willing doctor, giving up on workers' compensation altogether and using their prepaid health plan to cover the cost of treatment. When prepaid health is used, the patient then has out-of-pocket costs where there would be none under workers' compensation and the patient's group health insurance is impacted. In addition, the patient is not eligible for Temporary Total Disability, Vocational Rehabilitation, and compensation for permanent partial impairment.

In short, the law that was intended to compensate workers who become injured on the job and prohibits such injured workers from taking legal action against their employers for their potentially permanent injuries is not being used as it should be simply because doctors are unwilling to provide them with treatment due to low reimbursement rates.

H.B. 152, HD1 will provide needed incentive for more medical providers to begin accepting workers' compensation claimants as patients. HIWA strongly urges passage of H.B. 152, HD1.

Thank you for the opportunity to share our views and concerns.

SENATE COMMITTEE ON JUDICIARY AND LABOR

Senator Clayton Hee, Chair

March 12, 2013 at 10:30 a.m.

Conference Room 016

Supporting 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.

Payments to health care providers under Hawaii's workers' compensation law are based on the Medicare Resource Based Relative Value Scale, which itself consists of payments that are far below the actual costs of care. This bill improves access to health care by allowing payments for health care to increase from 110% to 130% of the Medicare Resource Based Relative Value Scale.

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

LATE TESTIMONY

Brittany Lauren Nishizaki

I am an injured Local 5 member seeking workers compensation but being denied.

1418 Makiki Street Apt. A

Honolulu, Hawaii

96814

Phone: 808-589-8145

To: The Senate Committee on Judiciary and Labor

Senator Clayton Hee, Chair

Senator Maile S. L. Shimabukuro, Vice Chair

Date: Tuesday, March 12, 2013

10:30 a.m.

Place: Conference Room 016

State Capitol

415 South Beretania Street

From: Brittany Nishizaki, injured Local 5 member being denied workers compensation

Position: Support

Hi my name is Brittany Lauren Nishizaki. I have worked at the Sheraton Waikiki Edge Bar pool side service for over three years. My first year of working there I got employee of the year by my manager at the time Shaun Ono. The next year Eric Lovern was the new manager and he was going to honor me with an award than entails being a dedicated worker, get numerous comments by guests and somebody who helps out in the community. The only reason I couldn't qualify for it was because I had to be there 3 years to accept the award.

My third year at Sheraton Waikiki my manager starts a program for acknowledging employees by the month, and I was the 1st employee awarded when that started. I am an employee that rarely calls in sick. I work the pool side 40 hours a week. OK so, EVERYBODY at the Edge Bar and Rum Fire hates working the Edge pool. Why? Because the Edge pool is very hard work, long hours, in direct sun all day, walk up and down stairs, have to be able to bend and lean down to guests roaming in pool and laying in low lounge chairs 8 hours a day while consistently holding a tray that holds at-least 15 drinks or more plus food. On top of that you have to pick up food all the way in the back. Another thing is guests move their tables and lounge chairs in the aisle, so we are stuck walking over these things with heavy trays and wet floors.

2/26/2013

OK so I absolutely love my job, I meet the same guests numerous times a year and stay in contact. Have made friends with them some practically family. I treat all the guests the same and give them the best possible service they can get. I have had so many reviews just on Trip-Advisor and Yelp alone, that guests will come up to me and ask "Are you Brittany? I heard I was supposed to go to you" "Did you know you're famous Brittany on Trip-Advisor and Yelp?" This is the reason I am so successful at the pool, because I have a reputation to live up to. I like the 7-10 miles a day I walk at work, it's my exercise. And nothing beats the hot sun when my office is overlooking the beautiful ocean. I am writing this all down and being true to my words not to be cocky or say I am a great server or a hard worker and to be acknowledged but to let whomever know that I am not faking my illness of a bulging disc and that I did receive this problem due to working at the Sheraton Waikiki.

I want to go back to work but I also want to be compensated for what is rightfully mine, and that is workers comp. Back in May 2012 I hurt myself at work and instead of leaving right then I finished my full shift. Nicole Masuhara witnessed me hurting myself that day and time at work. I made a report at security and they told me to see doctors on call at the Princess Kaiulani. I asked them if it was ok if I see my own doctor. Security said yes, so I went home and rested since it was a Saturday I knew I wouldn't see my doctor till Monday. I called Doctor Assari the minute they open, 8:30 am Monday May 21st and told her I hurt my back at work. Doctor Assari said she doesn't see patients that hurt themselves at work, so she gave me 2 numbers of doctors that would, Hsieh 808-599-8887 and Zunin 808-535-5555. Ok thank you I told her. So I called the other 2 doctors thinking this is going to be easy. Think again I called numerous times a day, every day, leaving messages and nobody called me back. I even called Doctor Assari after a couple days and said no one answers at these numbers or return my calls; she said someone will eventually get back to you and to be patient. So I called HMA and other places to get numerous numbers of workers comp doctors. I called 33 times in 4 days, left messages talked with people and nobody would take me. So the only I could do was acupuncture which I had to pay out of pocket. So Wednesday or Thursday came along and I called back Doctor Assari and asked if I could use my regular insurance and I won't file workers comp. All because I was in pain wanted to be seen by a doctor to get a professional opinion and help so I can get better and be on my way back to work. Doctor Assari said "no we can't see you just because you used the word work". I was devastated, frustrated, so I decided to go back to work because I need to make money, no one will see me, and I need a doctor's note if I'm out a while, but if no doctors will see me not even my own how can I get a note? So I went back to work. I was ok for a while there was minor things hurting me on and off. Co-workers said it was sciatica and that everybody has it. So I toughened up and worked. I tried the whole back brace thing, yoga, taking it easier at work by not carrying so much heavy trays, tried to not lean down to the lounge chairs as much, made the guests get up to get the drinks. Anyway, time went on and like I said the pain was always on and off. Come December it started to get worse when I was working so I called Doctor Assari. They asked if it was workers comp I said no, even though it's due to work I am not filing a report because I just want to be seen like I wasn't before. So they saw me December 18 2012 and had me see a Physical therapist and told me to take anti-inflammatory and prescribed me pain killers Vicoden. I called her back later said I was still in pain, so Doctor Assari prescribed me stronger pain killers and set up a follow up appointment February 6th 2013.

I saw Doctor Assari Wednesday February 6th 2013, I said the pain just keeps getting worse the more I work. So she said I have the option of steroids or a cortisone shot, since I already have done the PT and pain killers and obviously that wasn't working. I said let's try the steroids. She asked me on a scale 1-10 what is my pain right now I said 4-6 now but when I am working which entails walking while lifting heavy trays up and down stairs and long distances its about 8-10 pain scale. So I went to work right after that and as soon as I started getting orders the heavy trays were making the pain worse and my limping would come into effect. As the next two days came on the pain would get worse and the limping was horrible. All of my guests and co-workers, managers, asking me if I'm ok and said it looked like I was getting worse every day. And they would all say this towards the end of the days. Because it would get worse the longer I worked. Come that Friday February 8th 2013 I barely even remember working because I was in so much pain. Everybody is like are you ok? Go see a doctor, don't come to work tomorrow. Every step I take I kept thinking I hope these steroids work. So by the end of that day I couldn't walk at all I had to hold myself up by a railing just to get up the stairs and serve my guests. I went home thinking it will be fine in the morning the steroids and pain killers will work. But come 11:20 pm that night it hit me I can't even get off this couch. So I called in for Saturday. When I woke up I was still in tremendous pain; back pain, leg pain, foot numbness, SI pain etc. I called the doctor I said I need something stronger so she set up x-rays and stronger pain killers and muscle relaxers. Over the weekend it didn't get better I couldn't even move from the couch to my bed, I was stuck. I called Monday and Doctor Assari gave me stronger pain killers and stronger muscle relaxers because the pain wouldn't go away. She then sent me to get an MRI. Sure enough I have a bulging disc with the results. Thursday February 14th 2013 came and I was able to walk by myself. So I called work immediately told my manager I wanted to file workers comp papers. Eric Lovern my manager said he was busy because it was Valentine's Day, come in Saturday.

So I went in Saturday and made my report with Eric Lovern. When I came in there Eric already had written on there for time of injury "repetitive work leading to disability of not working". As the 2 of us filled the rest of the papers out Eric skipped the page of witnesses. I said "Eric don't we need to write down ALL the witnesses because workers comp situations are tricky and they try to screw you over?" My manager Eric said "No, No, no, no, this isn't necessary EVERYBODY knows you didn't get hurt that day and it was due to repetitive hard work leading up to that day". Eric was confident he made me feel confident. He said there is going to be no problems with this.

So here I am now March 12th, 2013, still trying to figure this out. All because I didn't do proper procedures on a timely matter workers comp is saying I didn't get hurt at work. So now I have to pay for a lawyer. How is this fair? I even have phone records of me calling those doctors back in May 2012. So because nobody called me back or denied me even though I kept trying I am getting punished because I went back to work?

hee2 - Kathleen

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 11, 2013 2:45 PM
To: JDLTestimony
Cc: derrick@islandpt.com
Subject: Submitted testimony for HB152 on Mar 12, 2013 10:30AM
Attachments: HB 152, HD 1.pages

Categories: Red Category

HB152

Submitted on: 3/11/2013

Testimony for JDL on Mar 12, 2013 10:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Derrick Ishihara	Individual	Support	Yes

Comments:

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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