

**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 12, 2014

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: Wednesday, February 12, 2014
Time: 2:00 p.m.
Place: Conference Room 308, State Capitol

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

**Re: H.B. No. 1974 H.D. 1 Relating to Workers'
Compensation Medical Fee Schedule**

I. OVERVIEW OF PROPOSED LEGISLATION

HB 1974 HD 1 proposes to amend Section 386-21(c), Hawaii Revised Statutes (HRS), to carry out the recommendations of the State Auditor's report no. 13-10, ***A Report on Methodology for the Department of Labor and Industrial Relations' Workers' Compensation Medical Fee Schedule***, pursuant to Act 97, Session Laws of Hawaii 2013. Act 97 required the state auditor to assist the director of labor and industrial relations in administratively adjusting the workers' compensation medical fee schedule and identifying a potential improved methodology for conducting surveys.

The DLIR appreciates the assistance provided by the State Auditor and strongly supports the Auditor's recommendations as long as sufficient resources identified in this measure are provided to carry out the purposes of the proposal.

HB1974 HD1 proposes the following:

1. Require the director to update the medical fee schedule annually instead of every three years;
2. Allow the annual establishment of a maximum allowable fee ceiling higher than one hundred ten percent of Medicare for evaluation and management codes;
3. Appropriate funding in the amount of \$72,600.00 for 2 full-time positions to include one research statistician III and one office assistant IV position to support the annual fee schedule rule-making process;
4. Conduct a trend analysis of this Act's impact on workers' compensation claimants' access to appropriate treatment and appropriate funding in the amount of \$150,000.00 to conduct the trend analysis;
5. Repeal this measure on June 30, 2019 and reenact section 386-21(c), HRS, to the form in which it existed on June 30, 2014.
6. A report to the Legislature analyzing the Act's impact on workers' compensation claimants' access to appropriate treatment no later than the commencement of the regular session before the repeal day of the proposal.

II. CURRENT LAW

Section 386-21(c), HRS, specifies that the liability of the employer for medical care, services, and supplies shall be limited to charges up to 110 percent of the federal Medicare fee schedule applicable to Hawaii. The director may also establish an additional fee schedule if charges under Medicare are considered unreasonable or if a medical treatment, service, accommodation, or product is not covered by Medicare.

This additional fee schedule is referred to as the Workers' Compensation Supplemental Medical Fee Schedule, or Exhibit A. The law also requires the director to update the fee schedules at least once every three years. The primary guideline for establishing prevalent charges is a schedule of all maximum allowable medical fees provided to the director by prepaid health care plan contractors.

III. COMMENTS ON THE HOUSE BILL

The Department supports this measure to follow the auditor's recommendations for an annual review of the workers' compensation medical fee schedule, to refine the methodology of developing the medical fee schedule, and to establish a second maximum allowable fee ceiling for Evaluation and Management (E/M) medical services to improve access to medical treatment in workers' compensation cases.

The State Auditor reported that there was initial, positive feedback among affected stakeholders that these E/M codes should be reimbursed at a higher rate and treated differently from other codes because they are the codes that represent the entry point for medical treatment in workers' compensation cases. Increasing the allowable charges for these entry point codes has the potential to both draw more physicians to accept injured workers and to retain physicians currently treating injured workers.

The State Auditor also noted that the reimbursement costs for Medicare have gone down while costs have risen for health care providers, "This growing differential supports our proposal to narrow the gap by providing an incentive to doctors to treat workers' compensation cases by establishing a higher maximum allowable fee ceiling for qualified E/M codes." Greater reimbursement for the E/M codes will improve the access to medical treatment for injured workers.

Access to medical treatment for injured workers is critical, especially on the Neighbor Islands where there are fewer doctors and few doctors willing to do workers' compensation cases. This can provide barriers to the purpose of the workers' compensation law, to return workers back to work as soon as possible, especially where geographic distances can be greater. The result of delays and barriers to access to medical care include higher costs to employers for workers' compensation.

DLIR notes that the purpose of the appropriation in Section 4 is to carry out the State Auditor's recommendation [pg. 28 (c)] for the legislature, "Providing sufficient resources to the department to hire one or more contractors to perform an on-going trend analysis of the impact the methodology may have on access." The Department does not have the expertise or resources in house to perform this function, and if enacted and appropriated, intends to contract out this portion of the recommendations as suggested.

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 10, 2014

**TESTIMONY TO THE
HOUSE COMMITTEE ON FINANCE**

For Hearing on Wednesday, February 12, 2014
2:00 p.m., Conference Room 308

BY

BARBARA A. KRIEG
DIRECTOR

House Bill No. 1974, H.D. 1
Relating to Workers' Compensation Medical Fee Schedule

WRITTEN TESTIMONY ONLY

TO CHAIRPERSON SYLVIA LUKE AND MEMBERS OF THE COMMITTEE:

Thank you for the opportunity to provide testimony on H.B. 1974, H.D. 1.

The purposes of H.B. 1974, H.D. 1, are to require the Department of Labor and Industrial Relations (DLIR) to update the workers' compensation medical fee schedule annually; authorize DLIR to establish a workers' compensation medical fee ceiling that exceeds 110% of the fees prescribed in the Medicare Resource Relative Value Scale for Hawaii; and make appropriations.

The Department of Human Resources Development (DHRD) submits the following comments on this bill.

First, to be consistent with the recommendations of the State Auditor's Report No. 13-10, we recommend that Section 4. also require the Director of Labor's analysis and report to include the cost impact of this proposal.

Second, to the extent any annual changes to the medical fee schedule would increase our costs for the State's self-insured workers' compensation program, DHRD

would have to request additional appropriations from the Legislature. Workers' compensation is a mandatory benefit for injured employees under Chapter 386, Hawaii Revised Statutes.

Office of the Auditor
State of Hawaii
465 S. King Street, Room 500
Honolulu, Hawai'i 96813

(808) 587-0800
(808) 587-0830 FAX
<http://auditor.hawaii.gov>

Date: 11 FEB 2014

Please route this FAX message.

TO: Committee Clerk
Rep. Sylvia Luke, Chair

FAX Number: 1-800-535-3859
Office Number: (808) 586-6200

FROM: Leanda F. Santos

Phone Number: (808) 587-0800

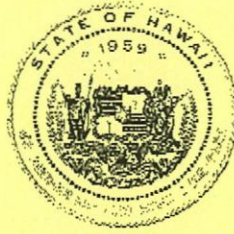
Total pages transmitting FIVE (5)
(including this page)

COMMENTS: **Testimony re: HB1974, HD1**
I hereby submit our testimony for the above-referenced bill. Please distribute accordingly. Our email server is not working. If you have any questions, please do not hesitate to contact me. Thank you!

Submitted By	Organization	Testifier Position	Present at Hearing
Leanda F. Santos	Office of the Auditor (Jan K. Yamane)	Support	Yes

Jan K. Yamane will appear at the hearing set for Wednesday, February 12, 2014 at 2 p.m.
Conference Room 308
State Capitol
415 South Beretania Street

STATE OF HAWAII
OFFICE OF THE AUDITOR
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917



JAN K. YAMANE
Acting State Auditor

(808) 587-0800
FAX: (808) 587-0830

**TESTIMONY OF JAN K. YAMANE, ACTING STATE AUDITOR
ON HOUSE BILL NO. 1974, HD1,
RELATING TO WORKERS' COMPENSATION MEDICAL FEE SCHEDULE**

House Committee on Finance

February 12, 2014

Chair Luke and Members of the Committee:

Thank you for the opportunity to testify in strong support of this bill, the purpose of which is to carry out the recommendations made in our Report No. 13-10, *A Report on Methodology for the Department of Labor and Industrial Relations' Workers' Compensation Medical Fee Schedule*.

As you are aware, Act 97, Session Laws of Hawai'i 2013, tasked my office with assisting the Department of Labor and Industrial Relations (DLIR) to create a methodology for administratively adjusting the State's workers' compensation medical fee schedule. The purpose of defining such a methodology was to identify health care services for which fee adjustments are needed and help ensure injured employees have better access to treatment.

Section 2 – Update the fee schedule annually

Section 2 of the bill would require the labor director to update the medical fee schedules annually. Currently, DLIR updates the medical fee schedule every three years, as required by law. The review process involves only medical codes listed on the supplemental fee schedule

and any requested codes by a third-party. The methodology we recommend, and with which DLIR concurs, would enable an annual review of *all* transacted medical codes regarding workers' compensation cases over a three-year period. Also, the review would apply to medical codes that are transacted on a consistent basis, thereby helping to ensure DLIR reviews the medical services that are actively being provided in workers' compensation cases.

Section 2 of the bill also amends Section 386-21(c), IIRS, to enable the director to establish a *separate* maximum allowable ceiling for Evaluation and Management (E/M) codes applicable to workers' compensation cases. E/M codes relate to the initial contact between patient and health care provider and are considered the entry point for treatment in workers' compensation cases. We believe this would create an incentive for health care providers to treat workers' compensation cases, and thereby address the legislative objective of improving access. This amendment would *not*, however, replace the statutory fee ceiling for all other CPT codes. That ceiling would remain at 110 percent of Medicare.

Section 3 – Assessment of impact on access to medical care

Section 3 of the bill addresses our recommendation 3(a)(iii) that DLIR be asked to assess the impact on access by performing a trend analysis that includes data both prior to and after implementation of the methodology. The section requires the director of labor, prior to sunset of this act, to report an analysis of this act's impact on workers' compensation claimants' access to appropriate treatment.

Currently, two separate actuarial studies are performed to assess the impact that changes to the fee schedule have on insurance premiums. However, no study is performed on the impact that fee changes have on access to treatment. Therefore, in our report we recommended DLIR perform a trend analysis to assess the impact fee changes have on access under the new methodology. Results would be submitted to the Legislature prior to the year when the proposed methodology would sunset (5 years hence) in order to help lawmakers make a more informed decision on whether to continue, amend, or discontinue the methodology in future years.

Section 4 – Funding for trend analysis report

Section 4 of the bill appropriates \$150,000 for the department to hire a consultant to produce such a report. My office was appropriated \$150,000 in Act 97, SLH 2013, to use at our discretion for the purposes of developing a new workers' compensation medical fee schedule methodology. We have not yet utilized these funds but, have already committed to the director that they would be applied to consultant services. We are currently in the process of drafting an RFP that would contract for the trend analysis work. In the event we are unable to encumber the money before it lapses at the end of the fiscal year, moneys appropriated in this bill would be applied for that purpose. Thus, these funds would be replacement funds and would not require an additional commitment of moneys from the Legislature.

Section 5 – Additional DLIR staff

Section 5 of the bill addresses our recommendation 3(b) to fund additional DLIR personnel, by appropriating \$72,600 to establish two FTE positions at the DLIR, a Research Statistician III and an Office Assistant IV.

After our review of the department's resources, we noted DLIR lacks adequate staff to implement our recommended methodology annually. Two additional FTEs would enable DLIR to collect, correlate, and analyze thousands of transacted medical codes necessary to identify medical services eligible for possible fee adjustment. The added staff is also needed to assist with adoption of administrative rules, which is required by law each time the medical fee schedule is updated. As noted in our report on pages 19 and 20, these two positions would require an appropriation of at least \$72,600 (\$43,800 for the Research Statistician III position; \$28,800 for the Office Assistant IV position). These figures represent the lower end of the salary range for each position (Research Statistician III salary range is \$43,800 to \$64,900; Office Assistant IV salary range is \$28,800 to \$46,100). However, the department has communicated to us that setting the salary range to the lower end would limit its ability to recruit more qualified candidates, including those who are already employed within the department.

Section 7 – Sunset and reenactment provision

Section 7 of the bill addresses our recommendation 3(a)(ii) that our proposed methodology be given a sunset date of 5 years in order to provide DLIR with sufficient time to assess the methodology's impact on access to medical treatment for workers' compensation cases. This section would repeal the new act in 5 years and reinstate the existing law as it currently stands.

Thank you for the opportunity to provide testimony in strong support of this bill. I am available to answer any questions you may have.

TESTIMONY OF JANICE FUKUDA

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

Wednesday, February 12, 2014
2:00 p.m.

HB 1974, HD1

Chair Luke, Vice Chairs Nishimoto and Johanson, and members of the Committee, my name is Janice Fukuda, Assistant Vice President, Workers' Compensation Claims at First Insurance, testifying on behalf of 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 one third of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **opposes** this measure as it affects motor vehicle insurance costs as well as workers' compensation insurance costs. An ongoing concern is whether the Department has the resources to properly analyze the medical fee schedule on an annual basis and whether doing so will result in steady increases to the medical fee schedule putting pressure on rates in both motor vehicle insurance and workers' compensation insurance. One of the primary cost drivers in both motor vehicle insurance and workers' compensation insurance when premiums were unaffordable in the 1990's was the high level of medical reimbursement. This bill could serve to quickly erode this cost containing provision in the law and lead to high premiums once again.

A floor of 110% of Medicare will in addition, ensure that certain CPT codes are kept at this level, whether warranted or not. This may add unnecessary costs to both lines of insurance. Finally, an effective date of July 1 is not feasible as insurers must file rate adjustments if necessary, therefore we would recommend a January 1 effective date should this measure move forward.

Thank you for the opportunity to testify on this measure.



HAWAII MEDICAL ASSOCIATION

1360 S. Beretania Street, Suite 200, Honolulu, Hawaii 96814
Phone (808) 536-7702 Fax (808) 528-2376 www.hmaonline.net

DATE: Wednesday, February 12, 2014

TIME: 2:00 P.M.

PLACE: Conference Room 308

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. Walton Shim, MD, President

Dr. Linda Rasmussen, MD, Legislative Co-Chair

Dr. Ron Keinitz, MD, Legislative Co-Chair

Dr. Christopher Flanders, DO, Executive Director

Lauren Zirbel, Community and Government Relations

Re: HB 1974 Relating to Workers' Compensation Medical Fee Schedule

Position: Strongly Support

The Hawaii Medical Association is submitting testimony in strong support of this measure as a means to address fair increases to the workers' compensation medical fee schedule. This legislation creates a reasonable process to evaluate issues affecting access to care for workers' compensation patients.

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 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.

Officers

President - Walton Shim, MD President-Elect – Robert Sloan

Secretary - Thomas Kosasa, MD Immediate Past President – Stephen Kemble, MD

Treasurer – Brandon Lee, MD Executive Director – Christopher Flanders, DO

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.

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 BEFORE THE HOUSE OF REPRESENTATIVES

COMMITTEE ON FINANCE

Wednesday, February 12, 2014
2:00 p.m.

HB 1974, HD1
RELATING TO WORKERS' COMPENSATION MEDICAL FEE SCHEDULE

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

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

Hawaiian Electric Co. Inc., its subsidiaries, Maui Electric Company, LTD., and Hawaii Electric Light Company, Inc. **strongly oppose H.B. 1974, HD1.** Our companies represent over 2,000 employees throughout the State.

This bill proposes to amend Section 386-21 HRS mandating annual reviews by the director of the DLIR and allowing the director to establish an increase over the existing 110% of the Medicare program's medical fee schedule, with an undefined ceiling.

The current statutes clearly define a comprehensive and equitable process to ensure the medical fees schedules are updated by the Director of the DLIR "every three years or annually, as required," and provide guidance on the statistical references used to determine if reimbursement rates for medical services are adequate and appropriate.

We believe this measure is unnecessary and ambiguous, and should consider data of prevailing rates and fee schedule design from other jurisdictions for comparison. Given that both workers' compensation and the auto insurance system use the same medical fee schedules, any increase in the reimbursement rates to health care providers will have an equivalent increase in costs for employers, and to consumers with higher motor vehicle insurance premiums.

For these reasons, we strongly oppose H.B. 1974, HD1 and respectfully request this measure be held.

Thank you for this opportunity to submit testimony.

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
The Honorable Aaron Ling Johnson, Vice Chair

February 12, 2014
2:00 pm
Conference Room 308

Re: HB 1974, HD1 - Relating to Workers' Compensation

Chair, Vice Chairs, and committee members, thank you for this opportunity to provide testimony on HB 1974, HD1, providing for an update of the workers' compensation medical fee schedule annually.

Kaiser Permanente Hawaii supports the intent of this bill.

Kaiser Permanente supports establishing the maximum allowable fee ceiling higher than one hundred ten per cent of the fees prescribed in the Medicare Resource Based Relative Value Scale ("RBRVS"). 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, an increase in excess of the 110% ceiling is long overdue.

In 1998, the state auditor 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, i.e. higher than the current 110% ceiling, 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.



Finance8-Danyl

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 10, 2014 8:26 PM
To: FINTestimony
Cc: geesey@hawaii.edu
Subject: Submitted testimony for HB1974 on Feb 12, 2014 14:00PM

HB1974

Submitted on: 2/10/2014
Testimony for FIN on Feb 12, 2014 14:00PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Yvonne Geesey	Individual	Comments Only	No

Comments: Aloha Committee Members; Please consider amending and modernizing HRS 386- 21 (c) (2) to include advanced practice registered nurses as well as physicians. This will keep our patients from waiting for authorizations to be signed after we advanced practice nurses see them, do the assessment, treat them and then have to find a physician colleague to "treat the paperwork." mahalo! Yvonne Geesey, JD Advanced Practice Registered Nurse

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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