

HB 922

HOUSE OF REPRESENTATIVES
TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2013

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

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

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

AMENDED TESTIMONY OF ILWU LOCAL 142 RE: HB 922 RELATING
TO MEDICAL BENEFITS UNDER WORKERS COMPENSATION LAW

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

Thank you for the opportunity to present testimony regarding HB 922. This bill empowers the Disability Compensation Division (“DCD”) of the Dept. of Labor and Industrial Relations (“DLIR”) to decide disputed medical treatment issues without a hearing. We support this bill but only if it is amended to permit an adjudication with the full consent of all parties to the controversy.

Very large demands have been placed upon the department in recent years to adjudicate a high caseload with less than adequate resources. It is therefore understandable that DCD should seek to adjudicate medical disputes without a hearing in an effort to expedite its decision making. However, determining whether medical care should be approved can be a complex matter which involves assessment of personal credibility, not merely a review of written conflicting physicians reports.

The right to a hearing before a person is deprived of property or liberty is an important principle of constitutional law as well as a sound administrative practice. Without attempting to engage in sophisticated or definitive legal analysis, it is apparent that employers and insurers may be constitutionally entitled to have a hearing before they are ordered to pay for medical treatment. Requiring the consent of both parties to make a decision without a hearing alleviates this constitutional concern entirely, yet will still reduce the administrative burden the department currently faces.

Therefore, the ILWU recommends that the bill be amended to require consent of both parties if the Department proposes to decide a medical dispute without hearing. With this amendment, the ILWU can support HB 922.



Property Casualty Insurers
Association of America

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To: The Honorable Mark M. Nakashima, Chair
House Committee on Labor & Public Employment

From: Mark Sektnan, Vice President

Re: **HB 922 – Medical Benefits Under the Workers’ Compensation Law**
PCI Position: Comments – Amendment Requested

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

Aloha Chair Nakashima and Members of the Committee:

The Property Casualty Insurers Association of American (PCI) is opposed to HB 922 as currently drafted. Existing law grants to the director of Director of the Labor and Industrial Relations Department the authority to resolve disputes between an employee and the employer or the employer's insurer regarding the proposed treatment plan or whether medical services should be continued. HB 922 would eliminate the requirement that the director hold a hearing to settle medical disputes pending before the director.

The hearing process allows both parties the opportunity to share additional information with the director to ensure the director’s decision is based on the most comprehensive information available. Elimination of the hearing would deprive the director of a complete record on which to make the decision on the whether a proposed treatment plan or medical service is both appropriate and effective for the injured worker. We do, however, understand there may be situations where neither party feels a hearing is necessary and the director may proceed with the decision making process. We would suggest that HB 922 be **amended** to allow the hearing to be waived “upon mutual consent of both parties.” With this amendment, the process can be made more efficient without sacrificing the benefit of complete information.

For these reasons, PCI asks the committee to amend this bill in committee.

WIMAH

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MAULI OLA
THE POWER OF HEALING

FEBRUARY 1, 2013

COMMITTEE ON LABOR AND PUBLIC EMPLOYEMENT

HOUSE BILL 922

RELATING TO MEDICAL BENEFITS UNDER THE WORKERS' COMPENSATION LAW

AMENDS SECTION 386-21(C), HAWAII REVISED STATUTES, BY ALLOWING THE DIRECTOR OF LABOR AND INDUSTRIAL RELATIONS TO MAKE A DECISION ON DISPUTES REGARDING TREATMENT PLANS AND CONTINUED MEDICAL SERVICES WITHOUT A HEARING.

WE BELIEVE THIS AMENDMENT WILL SPEED UP THE PROCESS OF WORKERS' COMPENSATION.

YOUR PASSAGE OF THIS BILL WILL BE GREATLY APPRECIATED.

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

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

**RE: HB 922 RELATING TO MEDICAL BENEFITS UNDER THE WORKERS'
COMPENSATION LAW**

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

The Chamber of Commerce of Hawaii ("The Chamber") **opposes** House Bill No. 922 relating to Medical Benefits Under the Workers' Compensation Law.

The Chamber is the largest business organization in Hawaii, representing more than 1,000 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.

Currently, when a treatment plan is submitted, the employer/carrier has just 7 days from postmark to approve or deny the proposed treatment. If the 7 day deadline is not met, the treatment plan is automatically considered approved. If the employer/carrier denies within 7 days, the injured worker/physician has 14 days to request a hearing. Most treatment plans are approved - these usually involve treatment with the attending physician, physical therapy, massage, acupuncture, chiropractic treatment, aquatherapy, etc. Generally, treatment plans are only denied if the treatment seems excessive or does not appear reasonable and necessary. While a treatment plan is disputed, current law requires continuation of treatment which the attending physician deems needed so as not to allow the injured worker's condition to deteriorate.

Allowing the Director to make a decision on disputes regarding treatment plans and continued medical services within 30 days without a hearing contravenes the parties' due process rights. There is insufficient time to obtain supporting evidence such as medical records review or evaluation particularly where the injured worker refuses to sign a medical authorization for release of records or refuses to voluntarily attend medical evaluation as is often the case. It is impossible to conduct any investigation to determine whether the proposed treatment is reasonable and necessary in such a short period of time.

According to the proposed language, the Director could make a decision within days. The Director should have the opportunity to review all evidence from injured worker/attending physician AND employer/medical expert prior to rendering a decision. The decisions made need to be informed decisions particularly where medical treatment is concerned. This bill is expected to dramatically

increase cost of medical care, services, and supplies under workers' compensation and drive up premiums.

For example, an injured worker sustained a work injury to his back in 1994. Over the years he continued to work and function although he also received medical treatment. Unfortunately, his medical treatment consisted almost entirely of increasingly large doses of narcotics. He is now a diagnosed addict. He decided he wants back surgery and found a physician willing to perform it. A medical expert opined the injured worker is not a surgical candidate because of his narcotic addiction and the surgery will not help his condition or alleviate his pain no matter how technically perfect it may be performed. The injured worker must be weaned from the narcotics first. The treatment plan for surgery was denied although employer is willing to pay for a detox program and consider future surgery if appropriate.

If this bill were passed it is entirely likely the injured worker's surgery would have been approved because employer would not have had sufficient time to investigate and obtain an expert medical opinion. This is a huge disservice to the injured worker and could leave him significantly worse off/disabled in the long run.

We urge you to take into consideration the significant unintended consequences that could occur if this bill becomes law. Thank you for the opportunity to provide testimony.