

**SB876**

**LATE**

**TESTIMONY**



**HAWAII GOVERNMENT EMPLOYEES ASSOCIATION**  
AFSCME Local 152, AFL-CIO

**RANDY PERREIRA**, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

The Twenty-Seventh Legislature  
The Senate  
Committee on Health  
&  
Committee on Judiciary and Labor

Testimony by  
Hawaii Government Employees Association  
February 6, 2013

**S.B. 876 – RELATING TO WORKERS' COMPENSATION**

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO is in support of S.B. 876 which establishes a means for an administrative decision to be made in the event that there is a dispute over medical service fees in regards to workers' compensation claims.

We believe this act provides a reasonable amount of time for negotiations to take place between the provider of medical services and the employer in the event of a dispute over medical service fees related to workers' compensation claims. This act also provides a means for resolution within a reasonable timeframe through the administrative decision rendered by the Director of Labor and Industrial Relations in the event that an agreement cannot be reached by the medical service provider and the employer.

We are in full support of S.B 876.

Respectfully submitted,  
  
Randy Perreira  
Executive Director



February 6, 2013

To: The Honorable Josh Green, Chair  
And Members of the Senate Committee on Health

The Honorable Clayton Hee, Chair  
And Members of the Senate Committee on Judiciary and Labor

Date: February 6, 2013  
Time: 1:15 PM  
Place: Conference Room 229

Re: **SB 876 Relating to Workers' Compensation**

Chair Green, Chair Hee and Members of both Committees:

My name is Kris Kadzielawa and I am the Director of Operations for Solera Integrated Medical Solutions, Hawaii's largest provider of payment integrity services to workers' compensation and automobile insurance programs.

**We are strongly opposed to this measure. However, if the intent of SB 876 is merely to codify in statute what already exists in HAR 12-15-94(d), we respectfully request that the committee use the exact language from HAR 12-15-94(d) to define the bill dispute process. Please see attached in a redlined version of SB 876.**

While SB 876 appears reasonable and benign on the surface, it is not as it dramatically alters the way the current bill dispute procedure defined in HAR 12-15-94(d). We are concerned that if passed, SB 876 will essentially remove the orderly and effective bill dispute resolution process we've had in workers' compensation for years and allow some parties to initiate the process without the Department's approval. It will thus allow collection agencies to force the dispute process on the employer and the Department, without the Department actually administering the process but in the end, forcing the Department to make a final decision on the disputed bill.

SB 876 seeks to replace HAR 12-15-94(d) while removing several important provisions contained in HAR 12-15-94(d) and HRS 386-21(c) regarding bill disputes and cost limits. Specifically, SB 876:



1. Removes the requirement that the Director initiate and administer the dispute process when requested by the employer or provider of service.
2. Removes the requirement that the Director must notify both parties that a position statement is due.
3. Makes the Department's decisions un-appealable. This may violate the Hawaii state constitution as it constitutes a "taking" without due process. In *Jou vs. Hamada*, the ICA opined the non-appeal provision which existed prior to the 2009 ICA ruling in HAR 12-15-94(d) must be removed. All parties should have the right of appeal as currently exists in other proceedings within the Hawaii Workers' Compensation system.
4. Removes a key pricing control of capping provider reimbursement at "private patient charges" thus allowing for pricing aberrations.

We believe this bill is primarily designed to serve bill collectors for the physician dispensing and drug repackaging industry which has been identified as responsible for a 400% increase (2011-2012 vs. 2010-2011) in workers' compensation bill disputes in Florida. Please see attached.

In summary, SB 876 will allow bill collectors who are presently not allowed to initiate a bill dispute to force employers and the Department of Labor into bill disputes. It removes the procedures that the Department effectively uses to administer the bill dispute process and removes the pricing cap which currently limits pricing aberrations. In addition it will likely increase the number of bill disputes several-fold and place an unreasonable burden on employers and the Department of Labor.

Thank you for the opportunity to testify on this measure.

Mahalo,

A handwritten signature in blue ink, appearing to read "Kris Kadzielawa", is written over the printed name.

Kris Kadzielawa

Director of Operations

Solera Integrated Medical Solutions

841 Bishop Street, Suite 2250

Honolulu, Hawaii 96813

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## A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION.

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

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

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

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

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

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

appropriate state agency having access to prevalent charges for medical fee information.

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

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

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

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



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

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

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

INTRODUCED BY: \_\_\_\_\_

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Sheena Harrison

## Florida's workers comp medical reimbursement disputes up fourfold

January 28, 2013 - 3:36pm

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

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

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

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

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

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

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To: Honorable Senator Josh Green, Chair  
Senate Committee on Health

Honorable Senator Clayton Hee, Chair  
Senate Committee on Judiciary and Labor

*LATE TESTIMONY*

From: Mark Sektnan, Vice President

Re: **SB 876 -- Workers' Compensation**  
**PCI Position: Oppose**

Date: Wednesday, February 6, 2013  
1:15 p.m., Conference Room 229

Aloha Chair Green and Chair Hee and Members of the Committees:

The Property Casualty Insurers Association of America (PCI) is opposed to SB 876. This bill would authorize the employer or the provider of services to request intervention from the Department of Labor and Industrial Relations (DLIR) in reasonable disagreements involving billing disputes and to provide a process for administrative resolution of these disputes. While SB 876 appears reasonable on the surface, PCI is concerned that it will essentially remove the orderly and effective bill dispute resolution process we've had in workers' compensation for years and allow the parties to initiate the process without the Department's approval. The bill could also allow providers to force the process on the employer and the Department without the Department actually administering the process but still forcing the Department to make a final decision on the disputed bill.

PCI also opposes this bill as it is duplicative of the dispute resolution process already provided in section 12-14-94(d) of the Hawaii Workers' Compensation Medical Fee Schedule and because it does not define the term "provider of service." Without a definition of the term, the number of billing disputes before DLIR could significantly increase as third-party, non-medical providers could now bring billing disputes to DLIR for resolution. Unless additional resources are provided to DLIR, we foresee delays in the processing of workers' compensation claims, which would negatively affect all the parties.

SB 876 would also remove the requirement that the Director must notify both parties that a position statement is due and would make the Department's decisions un-appealable. PCI believes that all parties should have the right of an appeal as currently exist in other proceedings within the Hawaii Workers' Compensation jurisdiction. Finally, the bill would remove a key pricing control of capping provider reimbursement at "private patient charges."

In summary, SB 876 will allow providers to force employers and the Department of Labor into bill disputes. It also removes the procedures that the Department effectively uses to administer the bill dispute process.

While PCI has serious concerns about SB 876, PCI would welcome the opportunity to work with the DLIR and other stakeholders to better understand the problem this bill attempts to address. PCI would work towards solving the problems brought forward by the stakeholders without the negative impact on the insurance industry that SB 876 would have.

For these reasons, PCI requests the committee hold SB 876 in committee.