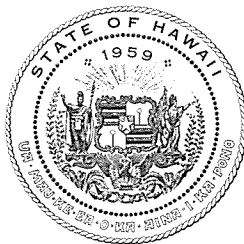


HB1974

HD2



**TESTIMONY OF JAN K. YAMANE, ACTING STATE AUDITOR
ON HOUSE BILL NO. 1974, HOUSE DRAFT 2,
RELATING TO WORKERS' COMPENSATION MEDICAL FEE SCHEDULE**

Senate Committee on Judiciary and Labor

March 11, 2014

Chair Hee 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.

This is the companion bill to Senate Bill 2923. We prefer the House Bill; our reasons follow.

While both versions require the department to provide a trend analysis of the effect the new methodology has on workers' compensation claimants' access to appropriate treatment, the Senate bill in section 4 also includes an analysis on cost impact. We believe this is unnecessary

as the DLIR's current procedures call for a cost impact analysis from the Department of Commerce and Consumer Affairs (DCCA) whenever the medical fee schedule is adjusted. In addition, the National Council on Compensation Insurance (NCCI) also submits a cost impact analysis. These actuarial assessments are intended to comply with the Small Business Impact Statement requirements under Sections 201M-2 and 201M-3, Hawai'i Revised Statutes.

Any future adjustments to the fee schedule would include such cost impact analyses in order to comply with the previously mentioned statutes. Therefore, the inclusion of a cost impact element in this bill duplicates work already performed by DLIR, DCCA, and NCCI.

Section 4 – Assessment of impact on access to medical care

Section 4 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. This section appropriates moneys to hire a consultant to produce such a report.

In Act 97, SLH 2013, my office was appropriated \$150,000 to use at our discretion for the purposes of developing a new workers' compensation medical fee schedule methodology. We have already committed to the Director of Labor that we would apply our \$150,000 appropriation to consultant services.

We are poised to issue a Request for Proposals (RFP) for this trend analysis. Based on our timetable, the deadline for submission of proposals would be in mid-April, with evaluations of

proposals by the end of April. We have planned to issue the notice of award and finalize the contract by the end of May, with a contract start date of June 1st.

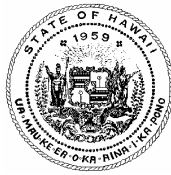
In the event we are unable to encumber the money before it lapses at the end of fiscal year 2013-2014, moneys appropriated in this bill would replace those funds and would not require an additional commitment of moneys from the Legislature. Thus, we request on page 5, line 9 that the appropriation of \$150,000 be inserted in the bill. Finally, in the event proposals received exceed our \$150,000 appropriation, we may need to request that the amount be increased.

Section 5 – Additional DLIR staff

Section 5 of the bill addresses our recommendation 3(b) to fund additional DLIR personnel by appropriating an amount to establish two FTE positions at the DLIR, a Research Statistician III and an Office Assistant IV. As noted in our report on pages 19 and 20, these two positions would require an appropriation of at least \$72,600 and as much as \$111,000. The salary range for each position is: Research Statistician III (\$43,800 to \$64,900); Office Assistant IV (\$28,800 to \$46,100). DLIR 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. We ask that your committee carefully consider these salary ranges when allocating position funding.

As always, thank you for the opportunity to testify in strong support of House Bill 1974, HD2, with amendments. I am available to answer any questions you may have.

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

March 10, 2014

TESTIMONY TO THE
SENATE COMMITTEE ON JUDICIARY AND LABOR

For Hearing on Tuesday, March 11, 2014
10:00 a.m., Conference Room 016

BY

BARBARA A. KRIEG
DIRECTOR

House Bill No. 1974, H.D. 2
Relating to Workers' Compensation Medical Fee Schedule

WRITTEN TESTIMONY ONLY

TO CHAIRPERSON CLAYTON HEE AND MEMBERS OF THE COMMITTEE:

Thank you for the opportunity to provide testimony on H.B. 1974, H.D. 2.

The purposes of H.B. 1974, H.D. 2, 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 Based 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. We note that the Senate Committee on Ways and Means adopted our suggestion in a substantially similar bill, S.B. 2923, S.D. 2, which now requires that "the director of labor and industrial relations

shall report an analysis of this Act's cost impact and effect on workers' compensation claimants' access to appropriate treatment.” (Emphasis added.)

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.



HAWAII MEDICAL ASSOCIATION

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

DATE: Tuesday, March 11, 2014

TIME: 10:00 am

PLACE: Conference Room 016

TO:

COMMITTEE ON JUDICIARY AND LABOR

Senator Clayton Hee, Chair

Senator Maile S.L. Shimabukuro, 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, MD
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.



Pauahi Tower, Suite 2010
1003 Bishop Street
Honolulu, Hawaii 96813
Telephone (808) 525-5877

Alison Powers
Executive Director

TESTIMONY OF ALISON POWERS

SENATE COMMITTEE ON JUDICIARY AND LABOR
Senator Clayton Hee, Chair
Senator Maile Shimabukuro, Vice Chair

Tuesday, March 11, 2014
10:00 a.m. Room 016

HB 1974, HD2

Chair Hee, Vice Chair Shimabukuro, and members of the Committee, my name is Alison Powers, Executive Director 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. Although this measure was introduced as a recommendation by the Legislative Auditor's Office, we believe that the focus of the Auditor was on accessibility to physicians who treat those injured under workers' compensation insurance rather than motor vehicle accidents. However, any change to Section 386-21 in the workers' compensation law would also impact all motor vehicle insurance claims and could increase Personal Injury Protection costs and other related costs including UM, UIM, and BI.

As the Auditor testified in prior hearings, they are supporting increases in EM codes, which are office visits. Office visits are not limited to workers' compensation cases and would automatically increase motor vehicle insurance costs as well.

An ongoing concern is whether the Department has the resources and expertise 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. If this bill is to move forward, we respectfully ask the committee to consider a legislative carve-out for motor vehicle insurance so that medical cost increases will not automatically increase for that line of insurance. We are happy to provide language to the committee, however, the title of this bill and its companion, SB 2923 may be too narrow.

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.



Chamber of Commerce HAWAII
The Voice of Business

**Testimony to the Senate Committee on Judiciary and Labor
Tuesday, March 11, 2014 at 10:00 A.M.
Conference Room 016, State Capitol**

**RE: HOUSE BILL 1974, HD2 RELATING TO WORKERS' COMPENSATION
MEDICAL FEE SCHEDULE**

Chair Hee, Vice Chair Shimabukuro, and Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") **opposes** HB 1974, HD2 Relating to Workers' Compensation Medical Fee Schedule.

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.

The Chamber has concerns that the increase in the medical fee schedule from 110% to a higher level of Medicare will raise workers' compensation costs and increase premiums paid by business. While we understand some of the concerns from the Auditor's report we believe that the workers compensation system already allows for reimbursement adjustments and this existing system has helped to maintain costs.

We ask that this bill be held. Thank you for this opportunity to express our views.

Hawaii State Legislature
Senate Committee on Judiciary and Labor
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

March 9, 2014

Filed via electronic testimony submission system

RE: HB 1974, HD 2, Workers' Compensation Medical Fee Schedule - NAMIC's Written Testimony for Committee Hearing

Dear Senator Clayton Hee, Chair; Senator Maile Shimabukuro, Vice Chair; and members of the Senate Committee on Judiciary and Labor:

Thank you for providing the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to your committee for the March 11, 2014, public hearing. Unfortunately, I will not be able to attend the public hearing, because of a previously scheduled professional obligation.

NAMIC is the largest property/casualty insurance trade association in the country, serving regional and local mutual insurance companies on main streets across America as well as many of the country's largest national insurers.

The 1,400 NAMIC member companies serve more than 135 million auto, home and business policyholders and write more than \$196 billion in annual premiums, accounting for 50 percent of the automobile/homeowners market and 31 percent of the business insurance market. NAMIC has 69 members who write property/casualty and workers' compensation insurance in the State of Hawaii, which represents 30% of the insurance marketplace.

Through our advocacy programs we promote public policy solutions that benefit NAMIC companies and the consumers we serve. Our educational programs enable us to become better leaders in our companies and the insurance industry for the benefit of our policyholders.

NAMIC's members appreciate the importance of having a medical fee schedule that is fair and commensurate with reasonable medical costs. However, the very purpose of a medical fee schedule is to act a cost-containment mechanism to prevent the ever-rising cost of medical care from adversely impacting the cost of workers' compensation insurance coverage and auto

insurance coverage. NAMIC is concerned that the proposed legislation will act as an insurance rate cost-driver, because it will create political pressure on the Director to maintain or increase CPT codes at levels that may not be necessary or appropriate. HB 1974, HD 2, could be detrimental to the entire workers' compensation insurance system in the State of Hawaii and could adversely impact the affordability of auto insurance coverages, including Personal Injury Protection, Uninsured/Underinsured Motorist Coverage, and Bodily Injury Liability Coverage, which are directly affected by medical fee schedules.

NAMIC respectfully tenders the following concerns with HB 1974, HD2:

1) The proposed amendment Section 386-21(c), Hawaii Revised Statutes will create needless administrative work for the Director and increase the political pressure on the department to continually increase the medical fee schedule ceiling

HB 1974, HD2, would require the Director to update the medical fee schedule annually, whether a revision is needed or not. Current law provides the Director with discretion to update the medical fee schedule "every three years or annually, as required."

Since current law already allows for an annual update of the fee schedule if one is needed, what is the public policy rationale for mandating an annual medical fee schedule update? If there isn't clear and reliable data that supports the need for an update of the medical fee schedule, why should the Director be *required* to use limited department resources to update the medical fee schedule annually? In effect, the proposed legislation will subject the department to special-interest group political pressures each and every year to adjust the medical fee schedule to address their particular financial interests.

2) NAMIC is also concerned that the proposed effective date is impractical and unworkable

Since insurers are required to file rate adjustments for regulatory approval, a July 1st effective date is administratively impractical and unworkable. NAMIC would recommend a January 1st effective date.

In closing, NAMIC is opposed to HB 1974, HD 2, because the proposed legislation is unnecessary and likely to adversely impact the affordability of workers' compensation insurance for employers/workers and auto insurance for consumers.

If the Senate Committee on Judiciary and Labor feels compelled to pass HB 1974, HD 2, NAMIC believes that it would make sense to exclude auto insurance from the purview of the proposed legislation, so that the effect of the annual medical fee schedule review may be thoroughly evaluated by the State of Hawaii as an insurance rate cost-driver before it is allowed to impact the cost of state mandated auto insurance coverage.

Thank you for your time and consideration. Please feel free to contact me at 303.907.0587 or at crataj@namic.org, if you would like to discuss NAMIC's written testimony.

Respectfully,

A handwritten signature in black ink, appearing to read "Christian John Rataj". The signature is fluid and cursive, with the first name "Christian" and last name "Rataj" being more prominent than the middle name "John".

Christian John Rataj, Esq.
NAMIC Senior Director – State Affairs, Western Region



To: The Honorable Clayton Hee, Chair
The Honorable Maile S.L. Shimabukuro, Vice Chair
Senate Committee on Judiciary and Labor

From: Mark Sektnan, Vice President

Re: **HB 1974 HD2 – Workers’ Compensation Medical Fee Schedule**
PCI Position: OPPOSE

Date: Tuesday, March 11, 2014
10:00 a.m., Conference Room 016

Aloha Chair Hee, Vice Chair Shimabukuro and Members of the Committee:

The Property Casualty Insurers Association of America (PCI) is opposed to HB 1974 HD2 which would require the Department of Labor and Industrial Relations (DLIR) to update the medical fee schedule annually and allow the DLIR to establish a fee schedule that exceeds 110% of the Medicare fee schedule.

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 individual 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 on an individual basis as needed and to consider 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.

Last year, the Legislature passed HB 152 which required the auditor to assist the DLIR in reviewing and updating the medical fee schedule. The auditor has completed this work and the new fee schedule is now effective. Pressure to update the schedule annually in the absence of any actual need could result in an increased workload for an understaffed department and result in a higher fee schedule.

The Legislature may also want to maintain its traditional role in approving blanket increases to the medical fee schedule. It is important to note that in Hawaii the medical

fee schedule 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. Hawaii is already seeing increases in workers' compensation premiums. This year, the Commissioner approved an increase of more than 6%. This is the third straight year of increasing premiums which are the result of higher costs in the system. This bill could not only increase the costs of medical care in the workers' compensation system further driving up the cost of workers' compensation in Hawaii, but it could also drive up the costs of medical care expenses for automobile insurance. As a result, rates would increase for Hawaii's consumers.

For these reasons, PCI asks the committee to hold HB 1974 HD2.