

**HB1974**

**HD2**

**LATE**

**TESTIMONY**



**STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

830 PUNCHBOWL STREET, ROOM 321  
HONOLULU, HAWAII 96813  
[www.hawaii.gov/labor](http://www.hawaii.gov/labor)  
Phone: (808) 586-8842 / Fax: (808) 586-9099  
Email: [dlir.director@hawaii.gov](mailto:dlir.director@hawaii.gov)

March 11, 2014

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

Date: Tuesday, March 11, 2014  
Time: 10:00 a.m.  
Place: Conference Room 016, State Capitol

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

**Re: H.B. No. 1974 H.D. 2 Relating to Workers'  
Compensation Medical Fee Schedule**

**I. OVERVIEW OF PROPOSED LEGISLATION**

HB 1974 HD2 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 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 funding is appropriated to support the annual fee schedule rule-making process.

HB1974 HD2 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 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 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.

## **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. The Department recommends the sum of \$150,000.00 be appropriated to conduct the trend analysis.

The Department recommends the appropriation of \$72,600.00 or so for the establishment of two full-time positions as noted in Section 5 for one Research Statistician III position and one Office Assistant IV position to support the annual fee schedule rule-making process. The DLIR notes that the HD2 provides these personnel without regard to chapter 76, HRS, and is unsure why this provision was inserted.

The Department supports this measure provided that sufficient funding is appropriated for the two additional positions to assist in the annual review process and for the trend analysis and its passage does not adversely affect the funding priorities as identified in the executive supplemental budget.

DEPARTMENT OF HUMAN RESOURCES  
**CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET, 10<sup>TH</sup> FLOOR • HONOLULU, HAWAII 96813  
TELEPHONE: (808) 768-8500 • FAX: (808) 768-5563 • INTERNET: [www.honolulu.gov/htr](http://www.honolulu.gov/htr)

KIRK CALDWELL  
MAYOR



CAROLEE C. KUBO  
DIRECTOR

NOEL T. ONO  
ASSISTANT DIRECTOR

March 11, 2014

The Honorable Clayton Hee, Chair  
and Members of the Committee  
on Judiciary and Labor  
The Senate  
State Capitol, Room 016  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Hee and Members of the Committee:

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

The purpose of H.B. 1974, H.D.2, is to carry out recommendations of the State Auditor's Report No. 13-10 by (1) requiring that the Department of Labor and Industrial Relations' (DLIR) Director update the medical fee schedule on an annual basis and (2) authorizing DLIR to establish a maximum allowable fee ceiling that is higher than 110% of the fees prescribed in the Medicare Resource Based Relative Value Scale applicable to Hawaii for evaluation and management (E/M) medical services as defined by the American Medical Association's Current Procedural Terminology codes. The City and County of Honolulu offers the following comments with respect to the bill.

Although the City appreciates the intent of H.B. 1974, the Committee should be aware that Hawaii Revised Statutes (HRS) Section 386-21(c) already provides the DLIR Director with the authority to update the medical fee schedule annually if he or she deems it necessary. As a result, the amendment to the third paragraph of the statute is unnecessary.

The same holds true with respect to the portion of H.B. 1974 which seeks to provide the DLIR Director with the ability to establish a higher medical fee ceiling. HRS Section 386-21(c) specifically states that **"[t]he rates or fees provided 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 section goes on to provide that "[i]f the director determines that an allowance under the medicare program

The Honorable Clayton Hee, Chair  
and Members of the Committee  
on Judiciary and Labor  
March 11, 2014  
Page 2

**is not reasonable . . . 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.”**

Given the foregoing, it is unclear why the additional language H.B. 1974 seeks to include in HRS Section 386-21(c) is necessary. The Office of the State Auditor has recommended a methodology which consists of an annual review of all transacted medical codes regarding workers' compensation cases over a three year period. The recommended methodology also calls for creating a separate maximum allowable fee ceiling for E/M codes which would, in turn, create an incentive for health care providers to treat workers' compensation patients. However, there is nothing in HRS Section 386-21(c) to prevent said methodology from being implemented at this time. To the contrary, the current statutory language already specifically authorizes an annual review and the establishment of additional fee schedules as warranted.

As a result, the lone roadblock to effectuating the State Auditor's recommendations and preferred methodology appears to be a lack of adequate resources in DLIR. The City accordingly supports Section 5 of the bill which appropriates funding for two full time positions in the department to assist with the implementation of medical code review and rulemaking processes.

Thank you for allowing us the opportunity to testify on this measure.

Sincerely,



Carolee C. Kubo  
Director

The Twenty-Seventh Legislature  
Regular Session of 2014

THE SENATE

Committee on Judiciary and Labor  
Senator Clayton Hee, Chair  
Senator Maile S.K. Shimabukuro, Vice Chair  
State Capitol, Conference Room 016  
Tuesday, March 11, 2014; 10:00 a.m.

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 1974, HD2  
RELATING TO WORKERS' COMPENSATION MEDICAL FEE SCHEDULE**

The ILWU Local 142 supports H.B. 1974, HD2, which requires the Department of Labor and Industrial Relations (DLIR) to update the workers' compensation medical fee schedule annually and authorizes 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. The measure makes an appropriation and sunsets on 6/30/19.

For almost two decades, medical fees for providers treating injured workers have been artificially suppressed to no more than 110% of the Medicare Resource Relative Value Scale for Hawaii. The change was enacted those many years ago to curb the rising cost of workers' compensation with the thought that providers were the source of the costs.

However, as a consequence of this drastic adjustment in fees, fewer and fewer physicians choose to treat injured workers today, particularly on the neighbor islands. Workers injured on the job are hard-pressed to find anyone who will offer treatment that will allow them to return to work in a timely manner. And, ironically, this serves to increase the cost of workers' compensation as more money is paid out in indemnity benefits to workers unable to return to gainful employment.

The proposal offered by the Legislative Auditor will allow the Department of Labor and Industrial Relations to set the ceiling for fees at an amount higher than the current ceiling. It also requires the Department to update fee schedules annually. Together, these two proposals will encourage more physicians and providers to enter the workers' compensation market, which will mean workers will get treatment they need to return to work and competition will improve the quality of care.

The only caveat is that this measure must be passed with an appropriation for the Department of Labor and Industrial Relations to have sufficient staff resources to carry out the requirements of the law. An unfunded mandate should not be permitted.

The ILWU urges passage of H.B. 1974, HD2. Thank you for considering our views.



# WIMAH

WORK INJURY MEDICAL ASSOCIATION OF HAWAII  
91-2135 FORT WEAVER ROAD SUITE #170  
EWA BEACH, HAWAII 96706

MAULI OLA  
THE POWER OF HEALING

MARCH 11, 2014

## COMMITTEE ON JUDICIARY AND LABOR

### HOUSE BILL HB 1974 HD2 RELATING TO WORKERS' COMPENSATION MEDICAL FEE SCHEDULE

REQUIRES DLIR TO UPDATE THE WORKERS' COMPENSATION MEDICAL FEE SCHEDULE ANNUALLY. AUTHORIZES 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. MAKES APPROPRIATIONS. EFFECTIVE JULY 1, 2030. SUNSETS JUNE 30, 2019 (HB1974 HD2)

WORK INJURY MEDICAL ASSOCIATION OF HAWAII STRONGLY SUPPORTS HOUSE BILL 1974 HD2.

WORK INJURY MEDICAL ASSOCIATION OF HAWAII BELIEVES THIS WILL BILL WILL PROVIDE A MORE ACCURATE FEE SCHEDULE.

THE PASSAGE OF THIS BILL WILL BENEFIT BOTH THE INJURED WORKER AND THEIR EMPLOYER.

YOUR PASSAGE OF THIS BILL WILL BE GREATLY APPRECIATED.

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

Testimony of  
John M. Kirimitsu  
Legal & Government Relations Consultant

Before:

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

March 11, 2014  
10:00 am  
Conference Room 016

**Re: HB 1974, HD2 - Relating to Workers' Compensation Medical Fee Schedule**

Chair, Vice Chair, and committee members, thank you for this opportunity to provide testimony on HB 1974, HD2, relating to workers' compensation medical fee schedule.

**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.

# DENNIS W. S. CHANG

*Attorney at Law, A Limited Liability Law Corporation*

WORKER'S RIGHTS - LABOR LAW  
WORKER'S COMPENSATION  
SOCIAL SECURITY DISABILITY  
LABOR UNION REPRESENTATION  
EMPLOYEES RETIREMENT SYSTEM  
BODILY INJURIES

March 10, 2014

To: COMMITTEE ON JUDICIARY AND LABOR  
The Honorable Clayton Hee, Chair  
The Honorable Maile Shimabukuro, Vice Chair  
Honorable Members of Committee

Date: Monday, March 11, 2014  
Time: 10:00 AM  
Place: Conference Room 016, State Capitol

From: Dennis W.S. Chang, Labor and Workers' Compensation Attorney

**Re: Strong Support for Passage of H.B. 1974, HD 2,  
Relating to Workers' Compensation Medical Fee Schedule**

Unquestionably, the Medical Fee Schedule should be reviewed to ensure fair compensation for medical providers and to attract young physicians into the workers' compensation arena. They are already saddled with hundreds of thousands of dollars for their tuition and have sacrificed tremendously to become physicians. The ceiling of 110% will hardly attract more physicians, in particular, in the rural areas to treat injured workers. This is a dramatic public policy concern. However, to place the onus on the Department of Labor and Industrial Relations (DLIR) to constantly establish a fair Medical Fee Schedule would require additional resources, which should be meaningful so that other pressing matters such as hearings on vital disputes between employers and injured workers do not take a backseat. The Legislature should embrace the bill, make the appropriate appropriations, and provide additional expertise as needed to the DLIR.

DWSC:tc