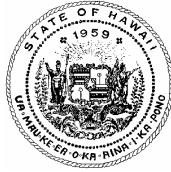


**SB2064**

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 23, 2014

**TESTIMONY TO THE  
SENATE COMMITTEE ON JUDICIARY AND LABOR**

For Hearing on Tuesday, February 25, 2014  
10:30 a.m., Conference Room 016

BY

BARBARA A. KRIEG  
DIRECTOR

**Senate Bill No. 2064**  
**Relating to Workers' Compensation**

**WRITTEN TESTIMONY ONLY**

TO CHAIRPERSON CLAYTON HEE AND MEMBERS OF THE COMMITTEE:

Thank you for the opportunity to provide testimony on S.B. 2064.

The purpose of S.B. 2064 is to entitle injured employees to up to twenty visits for psychological and psychiatric services under workers' compensation and require the visits to take place over a sixty-day period.

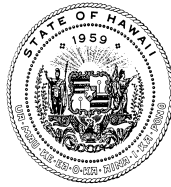
The Department of Human Resources Development (DHRD) has a fiduciary duty to administer the State's self-insured workers' compensation program and its expenditure of public funds. **It is in this capacity that DHRD respectfully opposes this bill.**

First, Section 386-21, HRS, already provides that injured employees are entitled to medical care, services, and supplies so long as reasonably needed and as the nature of the injury requires. Such medical care may include psychological and psychiatric visits if an attending physician believes it is reasonably needed for an injury at issue and submits a treatment plan for review and approval pursuant to the Director

of Labor's Workers' Compensation Medical Fee Schedule, Title 12, Chapter 15, HAR. However, this bill would take that medical determination out of the attending physician's hands—and remove an employer's ability to question the reasonableness and necessity of such treatment—by writing a statutory prescription for psychological and psychiatric treatment for every employee with a work injury, even if no such treatment is indicated. For example, an employee with a relatively minor injury (i.e., a cut) often requires only a single office visit to a physician, with minimal, if any, lost time from work. In the normal course of such claims, the attending physician would issue a "first and final" WC-2 report of injury and DHRD would open a claim, pay the physician, and close the claim. Instead, under this proposal, the claim would have to stay open indefinitely should the employee decide he or she wants to obtain the psychological or psychiatric treatment to which he is entitled.

Second, this bill would require DHRD to increase its reserves (our estimated future liabilities on open claims which we report annually for the State's CAFRs) to account for the costs of the statutorily-prescribed psychological or psychiatric visits, whether or not a claimant eventually obtains such treatment. Under the Director of Labor's medical fee schedule, a single 60-minute office visit for psychotherapy costs the employer \$147.58. The twenty visits mandated under this proposal would cost \$2,951.60. If this cost is then multiplied by the 643 total new claims that DHRD received in FY13, the increase in our medical reserves would be \$1,897,878.80 just for those claims. This does not include any wage replacement costs should the employee's visit for psychological or psychiatric treatment result in any disability time off.

Based on the foregoing, we respectfully request that this measure be held



**STATE OF HAWAII**  
**DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**  
830 PUNCHBOWL STREET, ROOM 321  
HONOLULU, HAWAII 96813  
<http://labor.hawaii.gov>

February 25, 2014

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

Date: Tuesday, February 25, 2014  
Time: 10:30 a.m.  
Place: Conference Room 229, State Capitol

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

**Re: S.B. No. 2064 Relating to Workers' Compensation**

**I. OVERVIEW OF PROPOSED LEGISLATION**

S.B. 2064 proposes to amend Section 386-24, Hawaii Revised Statutes (HRS), by entitling injured employees up to twenty visits for psychological and psychiatric services within a sixty-day period for medical rehabilitation under workers' compensation. The department opposes the proposal.

**II. CURRENT LAW**

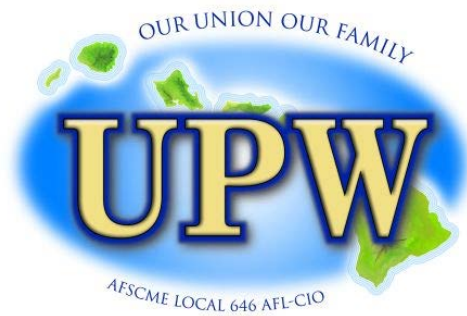
Section 386-3, HRS, specifies that the employer/carrier or Special Compensation Fund (SCF) shall be liable for accidents or diseases arising out of and in the course of employment. Section 386-3(c) states that claims for mental stress resulting solely from disciplinary action taken in good faith by the employer shall not be allowed. Compensability of other mental stress claims are determined on a case-by-case basis. If the psychological or psychiatric condition is not due to the industrial accident, the employer/carrier and SCF may not be liable for the psychological/psychiatric treatment.

Currently, Section 12-15-32, Hawaii Administrative Rules (HAR), allows the physicians, including psychiatrists and psychologists, an initial fifteen treatments of the injury during the first sixty calendar days without prior authorization. If the physician believes additional treatment is warranted, the physician shall submit a treatment plan to the employer/carrier requesting up to fifteen treatments within a one hundred twenty calendar day period.

### **III. COMMENTS ON THE SENATE BILL**

The Department believes the current workers' compensation statute and rules adequately provide for psychological and psychiatric services for workers' compensation claimants. The Department offers the following reasons for its position:

- This proposal, as drafted, automatically provides up to twenty visits for psychological and psychiatric services for all compensable workers' compensation claimants, whether the industrial injury has a psychological aspect or not.
- This proposed amendment requires all twenty visits to take place within a sixty-day period. The employee will be entitled to these 20 visits regardless of the seriousness of the employee's mental condition and the recommendation of the psychologist or psychiatrist.
- HAR 12-15-32 permits a treating psychologist or psychiatric doctor to provide up to an initial 15 treatments without prior authorization. Continuing treatment beyond the first 15 treatments requires a treatment plan to be approved by either the employer or director. If more intensive in-patient treatment is warranted, then the claimant's treatment is excluded from the frequency of treatment guidelines.



THE HAWAII STATE SENATE  
The Twenty-Seventh Legislature  
Regular Session of 2014

COMMITTEE ON JUDICIARY AND LABOR  
The Honorable Sen. Clayton Hee, Chair  
The Honorable Sen. Maile S.L. Shimabukuro, Vice Chair

DATE OF HEARING: Wednesday, February 25, 2014  
TIME OF HEARING: 10:30AM  
PLACE OF HEARING: Conference Room 016

**TESTIMONY ON SB2064 RELATING TO WORKERS' COMPENSATION**

By DAYTON M. NAKANELUA,  
State Director of the United Public Workers,  
AFSCME Local 646, AFL-CIO ("UPW")

My name is Dayton M. Nakanelua and I am the State Director of the United Public Workers, AFSCME, Local 646, AFL-CIO (UPW). The UPW is the exclusive representative for approximately 14,000 public employees, which include blue collar, non-supervisory employees in Bargaining Unit 1 and institutional, health and correctional employees in Bargaining Unit 10, in the State of Hawaii and various counties. The UPW also represents about 1,500 members of the private sector.

The UPW supports SB2604, which entitles injured employees to up to twenty visits for psychological and psychiatric services under workers' compensation. Requires the visits to take place over a sixty-day period

We ask that you pass this bill

Thank you for the opportunity to testify on this measure.

## TESTIMONY OF JANICE FUKUDA

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### SENATE COMMITTEE ON JUDICIARY AND LABOR

Senator Clayton Hee, Chair

Senator Maile Shimabukuro, Vice Chair

Tuesday, February 25, 2014

10:30 a.m.

### **SB 2064**

Chair Hee, Vice Chair Shimabukuro, 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** SB 2064, which amends Section 386-24, Medical rehabilitation.

This bill assumes all workers who suffer a work injury need psychological and psychiatric services regardless if they are diagnosed with a psychological or psychiatric condition. HRS 386-21 already requires the employer to furnish all medical care, services, and supplies as the nature of the injury requires. Furthermore, the Workers Compensation Medical Fee Schedule 12-15-32 Physicians (a) allows that treatment "not be more than the nature of the injury and the process of a recovery requires." This section provides for an initial 15 visits during the first 60 calendar days.

There is no medical or other basis to unilaterally provide 20 psychological treatments for all work injuries. This measure will add costs to the claim as it does not limit treatment to what is reasonable and necessary for recovery.

For these reasons, we respectfully request that SB 2064 be held.

Thank you for the opportunity to testify.



**Testimony to the Senate Committee on Judiciary and Labor  
Tuesday, February 25, 2014 at 10:30 A.M.  
Conference Room 016, State Capitol**

**RE: SENATE BILL 2064 RELATING TO WORKERS' COMPENSATION**

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

The Chamber of Commerce of Hawaii ("The Chamber") **opposes** SB 2064 Relating to Workers' Compensation.

The Chamber is the largest business organization in Hawaii, representing over 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 members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

We oppose this bill as it is not necessary and will drive up costs for businesses and consumers. These services are already available should it be deemed necessary by the attending physician. As written, this bill will add mandated and entitled benefits even if the injured employee does not require psychological or psychiatric care.

For these reasons we ask that this bill be held. Thank you for the opportunity to testify.



TESTIMONY BEFORE THE SENATE  
COMMITTEE ON JUDICIARY AND LABOR

Tuesday, February 25, 2014  
10:30 a.m.

SB 2064  
RELATING TO WORKERS' COMPENSATION

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

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

Hawaiian Electric Co. Inc., its subsidiaries, Maui Electric Company, LTD., and Hawaii Electric Light Company, Inc. **strongly oppose S.B. 2064.** Our companies represent over 2,000 employees throughout the State.

This bill proposes to amend Medical Rehabilitation, Section 386-24 HRS, which entitles any employee suffering a work injury and receiving medical rehabilitation benefits, up to twenty visits for psychological and psychiatric services within a sixty-day period.

We do not feel it is necessary to amend the language to include "psychological and psychiatric services" since these types of services are already inclusive under the definition of "medical services" in the statute provided they are reasonably necessary and related to the work injury. Section 386-1 states "Medical care", "medical services", or "medical supplies", means every type of care, treatment, surgery, hospitalization, attendance, service, and supplies as the nature of the work injury requires".

**For these reasons, we strongly oppose S.B. 2064 and respectfully request this measure be held.**

Thank you for this opportunity to submit testimony.