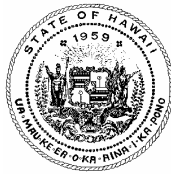


SB2923

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 4, 2014

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

For Hearing on Friday, February 7, 2014
10:00 a.m., Conference Room 016

BY

BARBARA A. KRIEG
DIRECTOR

Senate Bill No. 2923
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 S.B. 2923.

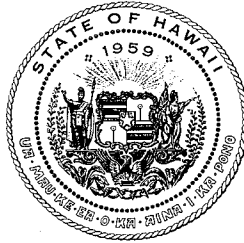
The purposes of S.B. 2923 are to require the Department of Labor and Industrial Relations (DLIR) to update the workers' compensation medical fee schedule annually; and authorize DLIR to establish a workers' compensation medical fee ceiling that exceeds 110% of the fees prescribed in the Medicare Resource Relative Value Scale for Hawaii.

The 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.

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.



**TESTIMONY OF JAN K. YAMANE, ACTING STATE AUDITOR,
ON SENATE BILL NO. 2923,
RELATING TO WORKERS' COMPENSATION MEDICAL FEE SCHEDULE**

Senate Committee on Judiciary and Labor

February 7, 2014

Chair Hee and Members of the Committee:

Thank you for the opportunity to testify in 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.

Section 2 – Update the fee schedule annually

Section 2 of the bill would require the labor director to update the medical fee schedules annually. Currently, DLIR updates the medical fee schedule every three years, as required by law. The review process involves only medical codes listed on the supplemental fee schedule

and any requested codes by a third-party. The methodology we recommend, and with which DLIR concurs, would enable an annual review of *all* transacted medical codes regarding workers' compensation cases over a three-year period. Also, the review would apply to medical codes that are transacted on a consistent basis, thereby helping to ensure DLIR reviews the medical services that are actively being provided in workers' compensation cases.

Section 2 of the bill also amends Section 386-21(c), HRS, to enable the director to establish a *separate* maximum allowable ceiling for Evaluation and Management (E/M) codes applicable to workers' compensation cases. E/M codes relate to the initial contact between patient and health care provider and are considered the entry point for treatment in workers' compensation cases. We believe this would create an incentive for health care providers to treat workers' compensation cases, and thereby address the legislative objective of improving access. This amendment would *not*, however, replace the statutory fee ceiling for all other CPT codes. That ceiling would remain at 110 percent of Medicare.

Section 3 – Additional DLIR staff

Section 3 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.

After our review of the department's resources, we noted DLIR lacks adequate staff to be able to implement our recommended methodology annually. Two additional FTEs would enable DLIR to collect, correlate, and analyze thousands of transacted medical codes necessary to identify

medical services eligible for possible fee adjustment. The added staff is also needed to assist with adoption of administrative rules, which is required by law each time the medical fee schedule is updated. As noted in our report on pages 19 and 20, these two positions would require an appropriation of at least \$72,600 (\$43,800 for the Research Statistician III position; \$28,800 for the Office Assistant IV position). These figures represent the lower end of the salary range for each position (Research Statistician III salary range is \$43,800 to \$64,900; Office Assistant IV salary range is \$28,800 to \$46,100).

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. The section requires the director of labor, prior to sunset of this act, to report an analysis of this act's impact on workers' compensation claimants' access to appropriate treatment. This section appropriates moneys to hire a consultant to produce such a report.

Currently, two separate actuarial studies are performed to assess the impact that changes to the fee schedule have on insurance premiums. However, no study is performed on the impact that fee changes have on access to treatment. Therefore, we recommend DLIR perform a trend analysis to assess the impact fee changes under the new methodology have on access. Results would be submitted to the Legislature prior to the year when the proposed methodology would sunset (5 years hence) in order to help lawmakers make a more informed decision on whether to continue, amend, or discontinue the methodology in future years.

My office was appropriated \$150,000 in Act 97, SLH 2013, to use at our discretion for the purposes of developing a new workers' compensation medical fee schedule methodology. We have not yet utilized these funds but we have already committed to the director that they would be applied to consultant services. In the event we are unable to encumber the money before it lapses at the end of the fiscal year, moneys appropriated in this bill would be applied for that purpose. Thus, these funds would be replacement funds and would not require an additional commitment of moneys from the Legislature.

Section 6 – Sunset and reenactment provision

Section 6 of the bill addresses our recommendation 3(a)(ii) that our proposed methodology be given a sunset date of 5 years in order to provide DLIR with sufficient time to assess our methodology's impact on access to medical treatment for workers' compensation cases. This section would repeal the new act in 5 years and reinstate the existing law as it currently stands.

I am available to answer any questions you may have.



HAWAII MEDICAL ASSOCIATION

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

DATE: Friday, February 7, 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: SB 2925 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.

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.

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

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.

We have attached a study for your review.

Mahalo for the opportunity to submit testimony on this important issue.

REFUSAL OF WORKERS' COMPENSATION CARE AMONG HAWAII PHYSICIANS PREVIOUSLY ACCEPTING IT

Ron Kienitz, DO
Chair, Workers' Compensation Committee
Hawaii Medical Association

INTRODUCTION

In 1993 and 1994, concern was expressed by Hawaii businesses regarding workers' compensation costs. At that time, Hawaii's medical fee schedule (MFS) approximately reflected the well recognized cost of living premium of Hawaii versus mainland locales. At that time, the MFS was regulated to annual adjustments (up or down) according to Hawaii's general Consumer Price Index (CPI). (These adjustments were made to a base set in 1974 that was approximately 80% of rates paid by private pay health insurance carriers.) Although a national workers' compensation research group considered Hawaii's MFS appropriate for controlling costs, the MFS was one of many points of focus of an initiative by Hawaii's business community concerned with total costs. In its 1995 legislative session, Hawaii's legislators chose to ignore virtually all of the other 30+ reforms presented for consideration and focused almost exclusively on the MFS. Although federal Medicare rates are based on an entirely different demographic and are set based on the economic problems of maintaining the system itself, Hawaii's legislature enacted legislation tagging the MFS to Medicare rates + 10%. Because of concomitant changes in Medicare reimbursement, this action effectively decreased Hawaii's medical fee schedule by 54% as of 7/1/95. It appears that this action has had the predictable result of insidiously decreasing the pool of physicians that are willing to care for workers injured on the job. Both Hawaii's legislature and its Department of Labor and Industrial Relations have been reluctant to recognize that this trend exists. This study by the Workers' Compensation Committee of Hawaii Medical Association represents an attempt to demonstrate the validity of this trend and to quantify it. A secondary question explores what increase in the current fee schedule would be required to entice those physicians that have dropped their treatment of work injuries to accept them back into their practice.

METHOD

Participants in this study consisted of 422 total respondents to a survey sent to approximately 2000 Hawaii physicians. The following letter was sent:

In a team effort, the Hawaii Medical Association and Kaiser have been attempting to increase workers' compensation fees so that all physicians can care for injured workers. Please answer the following questions:

What is your specialty?

As a result of the workers' compensation fee schedule limiting reimbursement to 10% over Medicare rates, have you reduced, limited, or eliminated care of injured workers from your practice?

If so, please complete the following:

Understanding the added paperwork and management burden that goes along with accepting workers' compensation cases, what is the lowest level reimbursement over Medicare rates at which you would be likely to end all restrictions on caring for injured workers? MC + 10/20/30/40/50/60/70/80/90/100%?

RESULTS

Of the 422 total responses of physicians accepting workers' compensation patients, 66.04% (328) marked yes. That is, they had dropped care of work injuries. Several others commented that they were considering dropping and/or were currently limiting the work injuries they would accept.

Of the 328 respondents indicating that they had dropped accepting workers' compensation cases, the response to the question of the average percentage reimbursement over Medicare that would be necessary to again accept the care of injured workers was 60%.

DISCUSSION:

Clearly, the 1995 severe reduction of reimbursement for treating work injuries has had a severely adverse effect in access to care from Hawaii's physicians. Written comments from some respondents that continue to accept these cases suggest that this trend will continue and worsen. Although not solicited, many respondents chose to add comments to the survey form. Some examples of such comments are as follows

- I would prefer not to treat w/c pts if other surgeons are readily available. Too much paper work, if contested, copying charts, delayed payments – not worth time and effort
- Besides the low reimbursement and high paperwork, there are other reasons why seeing w/c is such a hassle.
- Too much paperwork, time and headaches dealing with it.
- Too many rules and too much paper work
- It is the added proactive burden that prevents me from caring for injured workers. No amount of money will change that. However if these burdens were taken away, I would be willing to take Medicare rate + 0%.
- I cannot get orthopedic referrals for patients. It takes longer to get people better.
- Reimbursement at the 50th percentile for nation

- The MC reimbursement rate is so low for psychiatry that even MC +100% would be insufficient.
- The delays in care because of need to get approval and the denials of care are what keep me limiting my practice.
- Too much trouble at any level of reimbursement.
- Considering stopping seeing (even our patients) due to low reimbursement, non-payment, paperwork headaches!
- XXX clinics has both limited and eliminated care of injured workers because of the inadequate reimbursement for such workers, given the added paperwork and management burden.
- For me, reimbursement is not the issue
- The problem is that the WC carriers constantly fight and delay evaluations and most therapy for even patients that have urgent problems, payments are often delayed or denied because insurer refused to acknowledge their responsibility and mostly must wants to keep all the premiums without giving coverage.

12/14/2004

TESTIMONY OF JANICE FUKUDA

SENATE COMMITTEE ON JUDICIARY AND LABOR

Senator Clayton Hee, Chair

Senator Maile Shimabukuro, Vice Chair

Friday, February 7, 2014

10:00 a.m.

SB 2923

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** this measure as it affects motor vehicle insurance costs as well as workers' compensation insurance costs. An ongoing concern is whether the Department has the resources 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. 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.

The Twenty-Seventh Legislature
Regular Session of 2014

THE SENATE

Committee on Judiciary and Labor
Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
State Capitol, Conference Room 016
Friday, February 7, 2014; 10:00 a.m.

**STATEMENT OF THE ILWU LOCAL 142 ON S.B. 2923
RELATING TO WORKERS' COMPENSATION MEDICAL FEE SCHEDULE**

The ILWU Local 142 supports S.B. 2923, 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 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 S.B. 2923. 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

FEBRUARY 7, 2014

COMMITTEE ON JUDICIARY AND LABOR

SENATE BILL SB 2923 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.

WORK INJURY MEDICAL ASSOCIATION OF HAWAII STRONGLY SUPPORTS SENATE BILL 2923

WORK INJURY MEDICAL ASSOCIATION OF HAWAII BELIEVES THIS 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 to the Senate Committee on Judiciary and Labor
Friday, February 7, 2014 at 10:00 A.M.
Conference Room 016, State Capitol**

**RE: SENATE BILL 2923 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** SB 2923 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.

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

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

February 7, 2014

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

Date: Friday, February 7, 2014
Time: 10:00 a.m.
Place: Conference Room 016, State Capitol

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

Re: Strong Support for Passage of S.B. 2923 Relating to Workers' Compensation

I continue to strongly support any legislation including S.B. 2923 which makes an attempt to adjust the Medical Fee Schedule (MFS), as required, to ensure that injured workers will have access to quality medical treatment for their work injuries. This is clearly consistent with the overarching humanitarian policy of the workers' compensation statute. The recommendations of the State Auditor's report identifying a methodology for conducting surveys to update the MFS through annual, rather than three-year, rule making should be embraced as more fair to medical providers. In appropriate cases, increases could be made annually. An apt analogy is the consideration of pay raises. Would you prefer to be considered for a pay raise annually rather than only once every three years?

The Legislature should require immediate action because one of the major medical providers, Kaiser Permanente, has already made the determination that its occupational clinics will be shutting down soon. That will be a major loss, in particular, on the neighbor islands where Kaiser has served a major role in filling the void of capable treating physicians to provide access to quality medical treatment for injured workers.

The bill must include the adoption of the State Auditor's recommendation of providing essential appropriation for the hiring of additional bodies or contracting out services to parties with the requisite expertise to perform the onerous, but necessary, recommended surveys. The bill will be doomed for failure, if passed, without the State Auditor's recommended nominal appropriation. That said, I strongly support the passage of S.B. 2923.

DWSC:mt

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: geesey@hawaii.edu
Subject: Submitted testimony for SB2923 on Feb 7, 2014 10:00AM
Date: Tuesday, February 04, 2014 9:07:49 PM

SB2923

Submitted on: 2/4/2014

Testimony for JDL on Feb 7, 2014 10:00AM in Conference Room 016

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Yvonne Geesey | Individual | Comments Only | No |

Comments: Aloha Judicial Committee; Please consider updating this Chapter to allow Advanced Practice Registered Nurses to provide care to injured workers. Proposed amendment to Section 386-21 (c) (2) to read "treating physician or advanced practice registered nurse" and "attending physician or advanced practice registered nurse." mahalo! Yvonne Geesey, JD, Advanced Practice Registered Nurse

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov