

SB2923

LATE

TESTIMONY



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

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

February 7, 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: Friday, February 7, 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: S.B. No. 2923 Relating to Workers' Compensation Medical Fee Schedule

I. OVERVIEW OF PROPOSED LEGISLATION

S.B. 2923 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 provided that sufficient funding is appropriated to support the annual fee schedule rule-making process.

S.B. 2923 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; and
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

Currently, 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 SENATE BILL

The Department supports this measure to follow the auditor's recommendations for an annual review of the workers' compensation 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.

DLIR notes that the appropriation in Section 4 is to support the trend analysis suggested by the State Auditor's report as well as production of the report. 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.

The Department supports this measure if sufficient funding is appropriated for the two additional positions to assist in the annual review process and for the trend analysis.

DEPARTMENT OF HUMAN RESOURCES
CITY AND COUNTY OF HONOLULU

850 SOUTH KING STREET, 10TH FLOOR • HONOLULU, HAWAII 96813
TELEPHONE: (808) 768-8500 • FAX: (808) 768-5563 • INTERNET: www.honolulu.gov/hr

KIRK CALDWELL
MAYOR



CAROLEE C. KUBO
DIRECTOR

NOEL T. ONO
ASSISTANT DIRECTOR

February 7, 2014

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

The Senate
State Capitol, Room 407
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Hee and Members of the Committee:

**SUBJECT: Senate Bill No. 2923, Relating to Workers' Compensation
Medical Fee Schedule**

The purpose of S.B. 2923 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 S.B. 2923, 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 S.B. 2923 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

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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 S.B. 2923 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 3 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



To: The Honorable Clayton Hee, Chair
Senate Committee on Judiciary and Labor

From: Mark Sektnan, Vice President

Re: **SB 2923 – Workers’ Compensation Medical Fee Schedule**
PCI Position: OPPOSE

Date: Friday, February 7, 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 in opposition to SB 2923 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 SB 2923.