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STATE OF HAWAII
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February 6, 2015

To: The Honorable Mark M. Nakashima, Chair,
The Honorable Jarrett Keohokalole, Vice Chair, and
Members of the House Committee on Labor & Public Employment

Date: Friday, February 6, 2015
Time: 9:00 a.m.
Place: Conference Room 309, State Capitol

From: Elaine N. Young, Acting Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. No. 694 Relating to Workers' Compensation

I. OVERVIEW OF PROPOSED LEGISLATION

H.B. 694 proposes to amend Chapter 386, Hawaii Revised Statutes (HRS) by adding new sections, and to amend Section 386-21(b), HRS, to allow health care providers to organize as Coordinated Care Organizations (CCO), to provide medical care, services, and supplies to injured employees in the workers' compensation program. H.B. 694 also cites the inclusion of coordinated care organization into Chapter 663-1.7, HRS.

The department strongly opposes the proposed new additions to chapter 386, HRS, and the proposed amendment to Section 386-21(b)

II. CURRENT LAW

Section 386-21, HRS, states the employer is to provide medical care, services and supplies so long as reasonably needed and allows the injured employee to select any physician or surgeon practicing on the island where injury occurred to provide medical care. If the injured employee is unable to select a physician or surgeon and the emergency nature of the injury requires immediate medical attention, or if the injured employee informs the employer that they do not wish to select a physician or surgeon, the employer shall select the physician or surgeon. The selection does not deprive the employee of their rights of subsequently selecting a

physician or surgeon for continuance of needed medical care.

III. COMMENTS ON THE HOUSE BILL

Section 386-3.5, HRS, provides for groups similar to coordinated care organizations to provide treatment in workers' compensation injuries. However, these "coordinated care organizations" are negotiated for and agreed upon by both employer and employee and apply only to collective bargaining agreements.

The department strongly opposes the proposed new additions to Chapter 386, HRS, and the proposed amendment to Section 386-21(b) for the following reasons:

1. The department is very concerned that the passage of this proposal may have a significant effect on the injured employee's right to select their own physician or surgeon.
2. By amending 386-21, HRS, this proposal may potentially allow a CCO to operate outside of the statute and related administrative rules, specifically Chapter 12-15 Medical Fee Schedule. As an example, currently if an employee does not agree with a denial of treatment that employee may request director's intervention via a hearing. Will the injured employee have those same rights under a CCO and will the injured worker be able to request intervention by the director in regards to their medical care?
3. H.B. 694 proposes in 386-B that any CCO can file with the director, but it is not clear what this means. Does a CCO only need to "file" with the director and automatically be allowed to provide services and provide the overall medical management of an injured employees claim? What action, if any, is required by the director? If the director is given the choice to deny or approve any CCO's application, will it be based on what criteria? Who is to say whether they qualify?
4. This bill proposal fails to clearly indicate who or what agency is responsible to say whether those involved in the CCO's are qualified. The proposed 386-B (b) specifies what the CCO plan qualifying under Chapter 386 shall include. Who is responsible to determine what is considered a "qualified" CCO plan. Who is responsible to oversee a CCO with a "qualified" plan to assure that they are providing adequate service and by what criteria or whose standards? We strongly disagree that the director should be placed in a position of policing CCO's under these circumstances as this is well beyond the director's intent
5. There are other many aspects of this proposal that are not very clear and are confusing. One example is in proposed Section 386-B (7) will allow workers to receive care from their attending physician who is not a member of the CCO, providing that the physician agrees to refer the patient to the CCO for specialized treatment. Yet the definition in the proposed Chapter 386-A defines the attending physician as only a doctor of medicine or osteopath.

6. The bill proposes reimbursement to providers in the CCO to be 140% of Medicare. By statute, the maximum allowed reimbursement is 110% of Medicare.
7. If this proposal should pass, the department will need additional positions and resources for added responsibilities due to CCO plans.

DAVID Y. IGE
GOVERNOR

JAMES K. NISHIMOTO
DIRECTOR

RANDY BALDEMOR
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
235 S. BERETANIA STREET
HONOLULU, HAWAII 96813-2437

February 4, 2015

TESTIMONY TO THE
HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

For Hearing on Friday, February 6, 2015
9:00 a.m., Conference Room 309

BY

JAMES K. NISHIMOTO
DIRECTOR

House Bill No. 694
Relating to Workers' Compensation

WRITTEN TESTIMONY ONLY

CHAIRPERSON MARK NAKASHIMA AND MEMBERS OF THE HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT:

Thank you for the opportunity to provide comments on H.B. 694.

The purpose of H.B. 694 is to authorize groups of health care providers to organize as coordinated care organizations for the provision of medical care, services, and supplies under Hawaii's workers' compensation law.

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. In that regard, DHRD respectfully submits these comments on the bill.

First, DHRD supports any effort to increase the number of quality providers who are willing and able to provide medical care, services, and supplies to our work-injured employees. To the extent this measure would help to accomplish that goal and make access to reasonable and necessary health care more available and accessible the intent of this bill is one for which we are supportive.

Second, however, we are concerned about how the proposed subsection 386-D would: 1) exempt the medical services performed by a coordinated care organization from the application of medical fees, schedules, and treatment utilization guidelines promulgated by the Director of Labor and Industrial Relations ("Director") pursuant to Sections 386-21 and -26, HRS; and 2) provide that a coordinated care organization negotiate fees for medical services with charges not to exceed 140% of fees prescribed in the Medicare Resource-Based Relative Value Scale system applicable to Hawaii. The current ceiling under Section 386-21(c), HRS, is 110% of the Medicare schedule. We note that Act 97 (2013) was enacted to task the State Auditor with assisting the Director to identify "medical or health care services or procedures for which fee adjustments are necessary to ensure that injured employees have better access to treatment." We further note that the Senate Ways and Means Committee report wrote in its April 5, 2013 committee report on H.B. 152, S.D. 2, which eventually became Act 97:

> Your Committee finds that the administrative adjustment of fees on a case-by-case basis, depending upon need, is preferable public policy to an across-the-board increase by legislative action. Your Committee recognizes that the issue of the workers' compensation medical fee schedule is complex and believes that it does not presently have sufficient understanding of the consequences that could flow from an across-the-board increase[.]

Third, to the extent putative coordinated care organizations would be exempt from any oversight by the Director and his promulgated medical fee schedules 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 INSURERS COUNCIL
A trade association of property and casualty insurance companies

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Alison H. Ueoka
Executive Director

TESTIMONY OF ALISON UEOKA

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
Representative Mark M. Nakashima, Chair
Representative Jarrett Keohokalole, Vice Chair

Friday, February 6, 2015
9:00 a.m.

HB 694

Chair Nakashima, Vice Chair Keohokalole, and members of the Committee, my name is Alison Ueoka, Executive Director of the 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 thirty-six percent of all property and casualty insurance premiums in the state.

Hawaii Insurers Council supports this bill. Coordinated Care Organizations is a way for employers to assist employees who choose to participate to navigate their way through medical care with the assistance of an attending physician who would be a Medical Doctor or Osteopath. The bill also increases reimbursement rates to those participating providers to 140% of Medicare. We believe this is a good start to improve the delivery of medical services and better manage care of the injured worker and believe that a higher reimbursement rate to these providers may be offset by a faster and more thorough recovery.

Thank you for the opportunity to testify.

American Chiropractic Association

Governor, District 7 *(HI, CA & NV, Guam, American Samoa & Commonwealth of Northern Mariana Islands)*
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To: Rep. Mark M. Nakashima, Chair
Rep. Jarrett Keohokalole, Vice Chair
COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

From: Joseph G. Morelli, Jr., D.C., F.I.C.C.
District VII Governor,
American Chiropractic Association

President,
Hawaii State Chiropractic Association

Date: Friday, February 06, 2015
Time: 9:00 am
Place: Conference Room 309

Subject: **Testimony in SUPPORT of HB 694 "**Relating to Workers' Compensation"

My name is Dr. Joseph G. Morelli, Jr., and I am a Doctor of Chiropractic in Hawaii, practicing Waipahu, on Oahu for the past 37 years. I currently hold the elected office as the District 7 Governor on the Board of Governors of the American Chiropractic Association. Nationally, I represent the local Hawaii Doctors of Chiropractic and also all the Doctors of Chiropractic in California, Nevada, Guam, American Samoa and the Mariana Islands. Additionally, In the State of Hawaii, I hold the elected office of President of the Hawaii State Chiropractic Association.

The American Chiropractic Association is the largest Chiropractic professional representative organization in the world. The Hawaii State Chiropractic is the only state wide representative organization for the Chiropractic profession in Hawaii. I give this as testimony to voice strong support to the intent of **HB 694**.

Coordinated Care Organization development and implementation is a growing trend in health care delivery across the nation. This model of providing health care services is intended to insure patients receive optimal care through coordination of treatment and other necessary services across multiple medical and provider specialties, as a particular patient/condition may warrant.

SB 694 allows for the development and utilization of these coordinated care organizations to operate within the unique delivery system governing the industrial injury patient under the Workers' Compensation system in Hawaii.

Doctors of Chiropractic have been attending industrial injury patients in Hawaii for many years. In addition to being the Attending Physician for an injured worker, we have had great success in cases that require concurrent and/or co-treatment along with other medical specialists. Frequently, industrial injury patients present with medical needs that span various provider areas of specialization. The idea of formally developing "Coordinated Care Organizations" that by their very design, is to have a more direct and responsible interactive approach to the treatment of the injured worker, can only help improve care and optimize clinical outcomes.

Please pass **HB 694** from your committee for the benefit of the health of the on the job injured worker in Hawaii.

The Twenty-Eighth Legislature
Regular Session of 2015

HOUSE OF REPRESENTATIVES
Committee on Labor and Public Employment
Rep. Mark M. Nakashima, Chair
Rep. Jarrett Keohokalole, Vice Chair
State Capitol, Conference Room 309
Friday, February 6, 2015; 9:00 a.m.

STATEMENT OF THE ILWU LOCAL 142 ON H.B. 694
RELATING TO WORKERS' COMPENSATION

The ILWU Local 142 **opposes** H.B. 694, which authorizes groups of health care providers to organize as coordinated care organizations for the provision of medical care, services, and supplies under Hawaii's workers' compensation law.

Currently, health care providers are not precluded from forming a group for the purpose of providing medical care, services and supplies under the workers' compensation law. In fact, Kaiser Permanente, through its Occupational Health services, is one such group providing treatment to workers injured on the job.

However, while Kaiser simply makes their Occupational Health services available to anyone (patients need not be Kaiser Health Plan members), what is being proposed in H.B. 694 will amend and distort what is already available in the statute for negotiation for benefit coverage under HRS 386-3.5. Under this section of the law, "any employer may determine the benefits and coverage of a policy required under this chapter through collective bargaining with an appropriate bargaining unit." What is missing in H.B. 694 is reference to negotiation through collective bargaining for a coordinated care system.

Under negotiated coordinated care, the union represents the interests of the workers and ensures that protections under the law are retained. Negotiated coordinated care can be a means to contain cost, streamline procedures, reduce the adversarial nature of the process, and, in all likelihood, return the injured worker back to work in a timely manner. The negotiated coordinated care arrangement must be reviewed and approved by the Director of the Department of Labor and Industrial Relations to ensure that the interests of the employees are protected and their rights are not abrogated.

There is no such protection for the worker in the proposal offered in H.B. 694. Health care providers may establish coordinated care groups to treat injured workers and receive workers' compensation payments. Employers may contract with one or more such groups and direct their employees to them. There is no mention of the worker's rights under the law or the role of the Department.

Under the proposed coordinated care model, employees will not be permitted to opt out but may choose a non-coordinated care treating physician. However, in all likelihood, the employee will receive all care within the coordinated care system, restricted only to those physicians, including specialists, contracted by the coordinated care organization. Choice, then, becomes theoretical.

Some may see this bill as a means of recruiting more physicians into the practice of treating injured workers because H.B. 694 provides for the organization to "negotiate fees for medical services and establish treatment protocols and utilization guidelines." This may mean higher fees than currently available through the medical fee schedule, but without knowing who will be involved in the negotiations (employer or insurer or both) or the process for negotiations, higher fees may simply be wishful thinking.

H.B. 694 is a sincere attempt at streamlining the workers' compensation system and possibly increasing the number of health care providers willing to treat injured workers, but we believe it misses the mark. Therefore, the ILWU respectfully requests that H.B. 694 be held.

Thank you for the opportunity to share our views and concerns.

keohokalole2-Relley

From:	mailinglist@capitol.hawaii.gov
Sent:	Thursday, February 05, 2015 8:23 PM
To:	LABtestimony
Cc:	ssmhawaii@aol.com
Subject:	Submitted testimony for HB694 on Feb 6, 2015 09:00AM
Attachments:	Testimony HB694.pages

HB694
Submitted on: 2/5/2015
Testimony for LAB on Feb 6, 2015 09:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Scott J Miscovich MD	WIMAH Work Injury Medical Association of Hawaii	Oppose	No

Comments: To: Rep. Mark M. Nakashima, Chair Rep. Jarrett Keohokalole, Vice Chair Members of the Committee on Labor & Public Employment Date: Friday, February 6, 2015 Time: 9:00 am Place: Conference Room 309 State Capitol 415 South Beretania Street Testimony Against House Bill 694 Scott J Miscovich MD , President of the Work Injury Medical Association of Hawaii submits the following testimony against HB 694: As written, it is unclear who will serve as a gatekeeper to ensure that any established protocols, treatment guidelines and utilization of medical care are appropriate. It is equally unclear what, if any, benchmarks will be used to establish what may be deemed appropriate. There is an extreme amount of risk and potential compromising of patient care when the insurers or employers are afforded the authority to dictate the parameters of medical treatment. What, if any, guidelines will the peer review and quality assurance committee follow? The legislation lacks a clear grievance process for parties seeking to appeal a decision made by either the peer review committee or quality assurance review committee as it relates to the operation of the coordinated care organization. What does an appeal process look like? What is the process for dealing with patient cases that fall outside the scope of “appropriate” protocols & treatment guidelines? Is there a grievance process for patients who feel their care has been compromised as a result of mandated guidelines? What happens once a final peer review committee files with DLIR an “adverse decision” as provided for in section 663-1.7(e)? What entity is monitoring and enforcing same? The last section of 386-D provides that “a non-member attending physician providing medical care to an injured worker as provided in subsection 386-B(b)(7) shall receive fees for service according to the coordinated care organization fee schedule.” It would be wholly inequitable to subject non-participating coordinated care organization providers to the coordinated care organization negotiated rates. Quality physicians would refuse to see patients who are subject to coordinated care organizations so as to avoid being subject to third party rates. This will further alienate quality physicians from treating work comp patients and only exacerbate existing access to care problems. At this time, it would be the recommendation of the medical community that a task force be created to recommend more comprehensive means for establishing quality care, treatment protocols and utilization guidelines for the st ate of Hawaii that will in no way compromise patient care. Thank you for your consideration. Scott J Miscovich MD President Work Injury Medical Association of Hawaii (WIMAH)

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.

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