



STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
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February 10, 2015

To: The Honorable Josh Green, Chair,
The Honorable Glenn Wakai, Vice Chair, and
Members of the Senate Committee on Health

The Honorable Gilbert S.C. Keith-Agaran, Chair,
The Honorable Maile S.L. Shimabukuro, Vice Chair, and
Members of the Senate Committee on Judiciary and Labor

Date: Wednesday, February 11, 2015
Time: 9:20 a.m.
Place: Conference Room 016, State Capitol

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

Re: S.B. No. 809 Relating to Workers' Compensation Treatment Plans

I. OVERVIEW OF PROPOSED LEGISLATION

SB809 proposes to add a new section in Chapter 386, Hawaii Revised Statutes (HRS), to allow physicians to electronically submit treatment plans of injured workers to employers. It will also require the employer to accept these electronically filed treatment plans and provide an electronic receipt.

The department supports the intent of this measure with comments and recommendations.

II. CURRENT LAW

Sections 12-15-32 Physicians, 12-15-34 Providers of service other than physicians, 12-15-40 Concurrent medical treatment, 12-15-42 Consultations, and 12-15-51 Surgery, of the Hawaii Administrative Rules (HAR) of the Medical Fee Schedule (Chapter 12-15), require physicians to obtain approval prior to providing the service and provide the rights of the insurance carrier to file an objection within a specific time period.

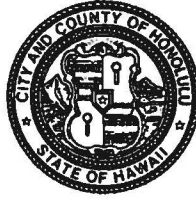
III. COMMENTS ON THE SENATE BILL

The department supports the intent of SB809 that would improve the efficiency in the provision of services provided to Hawaii's injured employees; however, we have the following concerns and recommendations with this bill as written.

1. It is unclear whether this measure applies to all forms of treatment requests, office visits, requests for consultations, surgery, concurrent care, therapies, or just to services provided by the Physician per Section 12-15-32, HAR.
2. The proposed bill allows a physician to use facsimile, the internet, or other electronic media to send the treatment plan to the employer. As there are a vast number of means of transmission over the internet and "other electronic media" that vary in requirements and complexities, the department recommends that the means of transmission be limited to either fax or e-mail to prevent transmission conflicts and confusion that may prevent or delay the transmission of the treatment plans.
3. The department recommends that a security protocol be included in the requirements for electronic transmissions to prevent the confidential information in the treatment plans from being released to the public.
4. The department recommends that each party designates a specific electronic address to be used to transmit and receive the treatment plan and receipt of same to prevent the plans from being "lost in the mail."
5. The department recommends that the measure clarify when (date/time) a treatment plan is received by the employer if it is received outside of the business hours of the employer. Since the employer is given seven days from the receipt of the treatment plan to file an objection to the plan, the department is concerned that the seven-day deadline will begin when a request is submitted during non- business hours or over the weekend.
6. The measure will require the department to amend its administrative rules by going through the administrative rules process (chapter 91). The department is concerned that the effective date of this proposal will not allow the department enough time to plan for, promulgate, and/or amend administrative rules to administer this bill if enacted. The department recommends this measure be effective one year after it has been approved.

DEPARTMENT OF HUMAN RESOURCES
CITY AND COUNTY OF HONOLULU
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KIRK CALDWELL
MAYOR



CAROLEE C. KUBO
DIRECTOR

NOEL T. ONO
ASSISTANT DIRECTOR

February 11, 2015

The Honorable Josh Green, Chair
and Members of the Committee
on Health
The Honorable Gilbert S.C. Keith-Agaran, Chair
and Members of the Committee
on Judiciary and Labor
The Senate
State Capitol, Room 016
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chairs Green and Keith-Agaran and Members of the Committees:

**SUBJECT: Senate Bill No. 809
Relating to Workers' Compensation Treatment Plans**

The City and County of Honolulu opposes S.B. 809 which would authorize physicians to submit workers' compensation treatment plans to employers by facsimile, the Internet, and other electronic media and require employers to accept electronically submitted treatment plans and provide an electronic receipt of the submission. The measure further provides that if the employer fails to file an objection to the treatment plan within seven calendar days following receipt, the treatment plan shall be deemed accepted.

The City opposes the measure for three different reasons. The first is the lack of specificity in the measure. While the term "electronic media" is referenced numerous times throughout the measure, there is no accompanying definition to allow interested parties to determine how treatment plans could be submitted and objected to should the bill become law.

S.B. 809 also requires that employers accept electronic submissions of treatment plans and provide an automatic electronic receipt upon such submission. The City simply does not have the technology to comply with this mandate. Even electronic

The Honorable Josh Green, Chair
The Honorable Gilbert S.C. Keith-Agaran, Chair
and Members of the Committees
The Senate
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receipt of requests received by facsimile would depend upon the sender programming its machine to provide such confirmation, rather than the recipient being able to do so automatically.

Finally, the City objects to a treatment plan being deemed accepted if an objection is not filed within seven days following receipt. Section 12-15-32 of the Medical Fee Schedule currently provides that an employer is responsible for payment of treatments provided for under a complete treatment plan until the date an objection is filed with the Director of Labor and Industrial Relations. That requirement is fair to all parties and should not be modified by the proposed legislation.

In light of the foregoing, the City respectfully requests that S.B. 809 be held in committee. Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to read "Carolee C. Kubo", with a long horizontal flourish extending to the right.

Carolee C. Kubo
Director



Pauahi Tower, Suite 2010
1003 Bishop Street
Honolulu, Hawaii 96813
Telephone (808) 525-5877

Alison H. Ueoka
Executive Director

TESTIMONY OF JANICE FUKUDA

COMMITTEE ON HEALTH
Senator Josh Green, Chair
Senator Glenn Wakai, Vice Chair

COMMITTEE ON JUDICIARY AND LABOR
Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

Wednesday, February 11, 2015
9:20 a.m.

SB 809

Chairs Green and Keith-Agaran, Vice Chairs Wakai and Shimabukuro and members of the Committees, 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 thirty-six percent of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **opposes** this bill.

The bill does not address possible system failure or power outages may render confirmations when transmission is actually incomplete, disrupted or lost. If electronic submission of treatment plans is allowed, it should be limited to electronic faxes provided the mode of transmission includes adequate controls to ensure patient confidentiality and protection of health and personal information. Email transmission may be more vulnerable to cyber interception.

We OPPOSE the requirement to deny treatment plans within 7 days of receipt. This eliminates due process for the employer who should retain the right to further investigate whether the treatment requested is reasonable or necessary. Employers should be allowed to question treatment when medical evidence to the contrary becomes available or when there is a non-work related intervening event or illness that supersedes or aggravates the compensable work injury.

WAYNE H. MUKAIDA

Attorney at Law

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HONOLULU, HAWAII 96813

TEL & FAX: (808) 531-8899

February 9, 2015

COMMITTEE ON HEALTH
Senator Josh Green, Chair

COMMITTEE ON JUDICIARY AND LABOR
Senator Gilbert S.C. Keith-Agaran, Chair

Re: S.B. No. 809 relating to Workers' Compensation Treatment Plans.
Hearing: Feb. 11, 2015, 9:20 a.m.

Chairmen, and members of the Committees, I am attorney Wayne Mukaida. I have been in practice since 1978. Since 1989, I have devoted a substantial portion of my legal practice to representing injured workers. I strongly support S.B. No. 809 relating to Workers' Compensation Treatment Plans.

I. Carriers have been abusing Medical Fee Schedule "guidelines."

The Workers' Compensation Medical Fee Schedule ("MFS") contains guidelines for medical care. The MFS was promulgated pursuant to HRS § 386-26 which specifically states that the MFS can only serve as "guidelines" for the frequency and use of medical care.

Unfortunately, carriers have utilized the MFS as a mandatory check off list to deny care. The provision of §12-15-32 that a physician "may mail" a treatment plan to the carrier has been coopted by carriers to deny treatment plans on the basis that the treatment plans were faxed rather than mailed. S.B. No. 809 would rectify this abuse by carriers.

II. The Bill should be amended to allow providers of services other than physician to utilize electronic transmission of a MFS.

The Bill allows a "physician" to transmit a treatment plan electronically. Providers of services other than physicians, such as physical therapists, massage therapists, occupational therapists, and other providers of medical services licensed by the

Department of Commerce and Consumer Affairs, are also covered by the MFS.

Section 12-15-34 of the MFS provides that such providers may mail a treatment plan to injured workers' attending physician for approval, and that the attending physician may then mail the treatment plan to the carrier.

The Bill should be amended by the addition of the following underscored language:

Notwithstanding any other provision to the contrary, whenever a physician or provider of service other than a physician, is required to mail a treatment plan to the employer, the physician may use facsimile, the Internet, or other electronic media to send the treatment plan to the employer.

CONCLUSION.

Please amend S.B. No. 809 to include a "provider of service other than a physician" and move the bill towards passage.

Thank you for considering my testimony.

WAYNE H. MUKAIDA

From: mailinglist@capitol.hawaii.gov
To: [HTHTestimony](#)
Cc: regoa@hawaii.rr.com
Subject: Submitted testimony for SB809 on Feb 11, 2015 09:20AM
Date: Monday, February 09, 2015 8:13:19 AM

SB809

Submitted on: 2/9/2015

Testimony for HTH/JDL on Feb 11, 2015 09:20AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
ANSON REGO	Individual	Support	No

Comments: As an attorney for workers compensation claimants, I favor this bill which allows physicians to submit workers' compensation treatment plans to employers by facsimile, the Internet, and other electronic media. The reason I favor same is that a few carriers/adjusters will not respond and/or will object at a later time that the treatment plan was defective if faxed or emailed. Even if the treatment plan is corrected, the delay to treatment of injured workers can take weeks or months while the technical denials are worked out and/or treatment plans resubmitted. Both the carriers/employers and the injured employees cannot move forward with timely treatment and get back employees back to work quicker due to this technicality of form over substance. This bill is a welcomed step in the right direction for injured workers and employers. Anson Rego Attorney, Waianae

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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From: mailinglist@capitol.hawaii.gov
To: [HTHTestimony](#)
Cc: dwschangattorney@gmail.com
Subject: Submitted testimony for SB809 on Feb 11, 2015 09:20AM
Date: Monday, February 09, 2015 7:38:50 PM
Attachments: [SB 809 Treatment Plan 02092015.wpd](#)

SB809

Submitted on: 2/9/2015

Testimony for HTH/JDL on Feb 11, 2015 09:20AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Dennis W S Chang	Individual	Support	Yes

Comments:

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From: mailinglist@capitol.hawaii.gov
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Cc: timothy.mcnulty@mauilaw.net
Subject: Submitted testimony for SB809 on Feb 11, 2015 09:20AM
Date: Monday, February 09, 2015 11:04:40 AM

SB809

Submitted on: 2/9/2015

Testimony for HTH/JDL on Feb 11, 2015 09:20AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Timothy McNulty	Individual	Support	No

Comments: Mr. Chairman, members of the Committee, I am attorney Timothy P. McNulty. I have been in practice since 1981. Since 1994, I have devoted a substantial portion of my legal practice to representing injured workers. I strongly support S.B. No. 809 relating to Workers' Compensation Treatment Plans. I. Carriers have been abusing Medical Fee Schedule "guidelines." The Workers' Compensation Medical Fee Schedule ("MFS") contains the guidelines for medical care. The MFS was promulgated pursuant to HRS § 386-26 which states that the MFS can only serve as "guidelines" for the frequency and use of medical care. Unfortunately, carriers have utilized the MFS as a mandatory check off list to deny care. The provision of §12-15-32 which provides that a physician "may mail" a treatment plan to the carrier has been coopted by carriers to deny treatment plans on the basis that they were faxed rather than mailed. S.B. No. 809 would rectify this abuse by carriers. II. The Bill should be amended to allow providers of services other than physician to utilize electronic transmission of a MFS. The Bill allows a "physician" to transmit a treatment plan electronically. Providers of services other than physicians, such as physical therapists, massage therapists, occupational therapists, and other providers of medical services licensed by the Department of Commerce and Consumer Affairs, are also covered by the MFS. Section 12-15-34 of the MFS provides that such providers may mail a treatment plan to injured workers' attending physician for approval, and that the attending physician may then mail the treatment plan to the carrier. The Bill should be amended by the addition of the following underscored language: Notwithstanding any other provision to the contrary, whenever a physician or provider of service other than a physician, is required to mail a treatment plan to the employer, the physician may use facsimile, the Internet, or other electronic media to send the treatment plan to the employer. CONCLUSION. Please amend S.B. No. 809 to include a "provider of service other than a physician" and move the bill towards passage. Thank you for considering my testimony. TIMOTHY P. MCNULTY

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