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STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
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April 21, 2017

To: The Honorable Jill N. Tokuda, Chair,
The Honorable Donovan M. Dela Cruz, Vice Chair, and
Members of the Senate Committee on Ways & Means

Date: Friday, April 21, 2017
Time: 9:30 a.m.
Place: Conference Room 211, State Capitol

From: Linda Chu Takayama, Director
Department of Labor and Industrial Relations (DLIR)

Re: H.C.R. No. 105 SD1 Requesting the Department of Labor & Industrial Relations to Report to the Legislature on its Efforts to Address Issues Related to the Vocational Rehabilitation Unit in its Disability Compensation Unit

I. OVERVIEW OF PROPOSED HOUSE CONCURRENT RESOLUTION

HCR105 SD1 requests the Department of Labor and Industrial Relations to submit a report no later than twenty days prior to the convening of the Regular Session of the 2018 Legislature to address issues raised and recommendations to improve the performance of the Vocational Rehabilitation Unit.

The report is to include any findings and recommendations relating to the Vocational Rehabilitation Unit made by the Workers' Compensation Working Group convened pursuant to H.C.R. No. 168, HD2, SD1, Regular Session of 2015.

II. CURRENT LAW

Section 386-25, Hawaii Revised Statutes (HRS), states that the, "purposes of vocational rehabilitation are to restore an injured worker's earnings capacity as nearly as possible to that level that the worker was earning at the time of injury and to return the injured worker to suitable gainful employment in the active labor force as quickly as possible in a cost-effective manner."

§386-25 also identifies the duties and responsibilities of the Vocational Rehabilitation Unit. §386-71.5 establishes the Unit in the Department of Labor & Industrial

Relations.

DLIR's Vocational Rehabilitation Unit consists of just one staff member to administer the program, which manages an average of 760 claims per month. In 1997, the Department lost thirteen (13) professional and clerical staff positions in the Vocational Rehabilitation Branch on Oahu and the Neighbor Islands due to a Reduction-in-Force (RIF). Attempts to restore professional and clerical positions to the Unit have been unsuccessful to date. Most recently, the Department requested one (1) Vocational Rehabilitation Specialist IV in the 2016 Legislature. It was denied.

III. COMMENTS ON THE HOUSE CONCURRENT RESOLUTION

An appropriation has been requested to modernize DCD's business processes, including Vocational Rehabilitation. Modernizing the Vocational Rehabilitation Unit's processes will enable the Department to maintain data on the Vocational Rehabilitation program that is envisioned to include information on success rates, efficacy of the program and some of the other data requested by the measure.

In 2016, DLIR assembled the Workers' Compensation Working Group (Working Group) as requested by H.C.R. 168 HD2 SD1 (SLH, 2015) to assess workers' compensation issues. The Working Group was presented with an overview of the findings of DCD's business process optimization analysis and case management system. Act 119 (State Budget) of the 2015 Legislature appropriated general funds for this purpose and the Gartner Group performed the study that included vocational rehabilitation.

The Working Group invited the participation of vocational rehabilitation counselors, appointed one to the group, and met with counselors and other stakeholders regarding the vocational rehabilitation program. Under a multi-year modernization effort, substantial improvements to the Department's ability to oversee and track VR outcomes are anticipated.

THE SENATE
TWENTY-NINTH LEGISLATURE
REGULAR SESSION OF 2017

COMMITTEE ON WAYS AND MEANS

Sen. Jill N. Tokuda, Chair
Sen., Donovan Dela Cruz, Vice Chair
Hearing: Friday, April 21, 2017
Time: 9:30 a.m.
Place: Conference Room 211

WRITTEN TESTIMONY OF LOWELL K.Y. CHUN-HOON
RE: HCR 105, S.D.1

Thank you for the opportunity to present testimony about HCR 105, S.D.1. I support the original version of HCR 105 which authorized an audit of the Department of Labor and Industrial Relation's Vocational Rehabilitation Unit for the reasons that are ably articulated in HCR 105, S.D. 1.

I am practicing labor lawyer in this jurisdiction who has specialized in workers' compensation law for almost forty years and represent three major labor unions in this state. During my entire practice, approximately fifteen of my clients are undergoing vocational rehabilitation services at any one time, so I have been directly involved with hundreds of such cases.

The severe problems highlighted by the existing resolution completely justify a full audit by an independent agency outside of the Department of Labor and Industrial Relations because the department has not been responsive when these criticisms have been raised to it directly regarding the Vocational Rehabilitation Unit. This lack of responsiveness is unusual and surprising since DLIR has functioned effectively in many other programs within the Disability Compensation Division. DLIR's hearing officers and hearings process, for example, generally render thoughtful, well-reasoned decisions in high volume in a timely and efficient fashion.

If the audit is not reinstated, however, the Committee on Ways and Means should still amend HCR 105, S.D.1 because it is unclear and remarkably non-specific in prescribing what actions must be taken to fulfill the mandate of the resolution. We suggest that the existing resolution should therefore include the following language:

To fulfill the purposes of this resolution, the legislature directs the Department of Labor and Industrial Relations to:

1. Create a new and separate working group to address the specific problems and issues raised by this resolution. The new working group shall consist of

a minimum of nine persons to include: one representative to the Department of Labor and Industrial Relations; two practicing vocational rehabilitation counselors; two practicing attorneys who are specialists in workers compensation, one representing employers and insurers and one representing claimants; two representatives from employers and insurers; and two representing unions and/or worker advocacy groups.

2. Convene the group within thirty calendar days of the passage of the present resolution to begin work.
3. Survey vocational rehabilitation counselors, claimants, lawyers specializing in workers compensation, employers, insurers, and unions regarding the issues presented by the present resolution to quantify and document the extent of problems raised by this resolution.
4. The working group shall prepare a report on the issues raised by resolution and specify the tangible actions taken by the Department of Labor and Industrial Relations to remediate those problems, to be submitted to the 2018 Hawaii State legislature, no later than twenty days before the commencement of 2018 Regular Session.

Thank you very much for considering these remarks.

Case Management Works – Hawaii, Inc.

THE SENATE
TWENTY-NINTH LEGISLATURE
REGULAR SESSION OF 2017

COMMITTEE ON WAYS AND MEANS

Sen. Jill N. Tokuda, Chair
Sen., Donovan Dela Cruz, Vice Chair
Hearing: Friday, April 21, 2017
Time: 9:30 a.m.
Place: Conference Room 211

WRITTEN TESTIMONY OF TONY HUNSTIGER, M. ED., CRC RE: HCR 105, S.D.1

Thank you for the opportunity to present testimony about HCR 105, S.D.1.

I have been working as a vocational rehabilitation (VR) counselor in the State of Hawaii since 1997. I have clients throughout the State. During the past few years, since the introduction of new staff at Department of Labor and Industrial Relation's (DLIR) VR Unit, policies and determinations generated by the VR Unit defy law and logic. VR Unit decisions demonstrate a lack of understanding of fundamental legal and VR concepts.

The VR Unit acting beyond the scope of its authority makes my job more difficult. Worse, workers who have been injured on the job are now left without the protection the law was designed to give them. Often the harm done to the person already victimized by a work injury is irreparable. The VR process, meant to be a safety net, fails.

Testimony submitted to the legislature this session stated:

- The VR Unit is now being administered contrary to the intent of HRS §386-25.
- Testimony described VR Unit actions that were "punitive", "retaliatory", "intimidating", "hostile", "threatening", "inappropriate", and "unresponsive."
- The VR Unit is abruptly and inexplicably closing VR cases
- The VR Unit denies VR plans, even when there are no objections to the plan.
- The VR Unit transfers cases away from the client's chosen counselor with no explanation.
- The VR Unit is not staffed with "appropriate professional staff" as required by law.
- The VR Unit is not compliant with administrative law as expressed in Chapter 91.
- The VR Unit inexplicably and wrongfully manipulates case closure statistics.

The above complaints are coming from all sides: defense attorneys, plaintiff's attorneys, insurance carriers, injured workers and VR counselors. The testimony documents repeated attempts by stakeholders to communicate with the DLIR about policies and determinations. DLIR has been steadfastly unresponsive. Due to DLIR's indifference to the harm being done by the VR Unit, a full audit by an independent agency is needed.

In addition, the Committee on Ways and Means should amend HCR 105, S.D.1 because in its present form it is unclear and remarkably non-specific in prescribing what actions must be taken to fulfill the mandate of the resolution.

I agree with Mr. Chun-Hoon, Esq. that the following suggested language should be included:

“To fulfill the purposes of this resolution, the legislature directs the Department of Labor and Industrial Relations to:

1. Create a new and separate working group to address the specific problems and issues raised by this resolution. The new working group shall consist of a minimum of nine persons to include: one representative to the Department of Labor and Industrial Relations; two practicing vocational rehabilitation counselors; two practicing attorneys who are specialists in workers compensation, one representing employers and insurers and one representing claimants; two representatives from employers and insurers; and two representing unions and/or worker advocacy groups.
2. Convene the group within thirty calendar days of the passage of the present resolution to begin work.
3. Survey vocational rehabilitation counselors, claimants, lawyers specializing in workers compensation, employers, insurers, and unions regarding the issues presented by the present resolution to quantify and document the extent of problems raised by this resolution.
4. The working group shall prepare a report on the issues raised by resolution and specify the tangible actions taken by the Department of Labor and Industrial Relations to remediate those problems, to be submitted to the 2018 Hawaii State legislature, no later than twenty days before the commencement of 2018 Regular Session.”

Thank you very much for your consideration.

Respectfully Submitted by,

Tony Hunstiger

Tony Hunstiger, M.Ed., CRC, LMHC
(808) 380-7024

State of Hawaii House of Representatives Twenty-Ninth Legislature Regular Session of 2017
Testimony in Support for HCR 105: Requesting the Auditor to conduct an audit of the Vocational Rehabilitation Unit in the Department of Labor and Industrial Relations, Disability Compensation Unit

Date: April 21, 2017, 9:30AM Scheduled Hearing

To: Committee on Ways and Means
Hon. Senator Jill N. Tokuda, Chair
Hon. Senator Donovan M. Dela Cruz, Vice Chair

From: Donna "Sweetie" Kuehu

Re: HCR 105, Requesting an audit of the vocational rehabilitation unit of the DOLIR

Aloha Honorable Senate Chair and Committee Members,

I support HCR 105. I am an injured worker who has gone through the pain and suffering of a workplace injury/illness, and I have experienced the compounded effect of the pain and suffering of the workers' compensation process at the State DOLIR. The need for an assessment of whether the Department is upholding the intent of HRS 386 in its entirety, and in this particular proceeding the section of 386-25(a) is long over-due. The idea that vocational rehabilitation counselors are being scrutinized is another new low for this Department. An injured worker that has to file a workplace injury claim has a difficult time even finding a physician willing to assist them because of the delays and mishandlings of the HRS 386 at the DOLIR. Lawyers are equally difficult to obtain since most of them represent the Employers in this town, and are also treated poorly. A Vocational Rehabilitation Counselor is necessary for an injured workers' recovery to health, wellness and return to work. The State should be supporting these professionals because of the service they provide to Hawaii's labor force, which is why I ask that this committee provide urgent support for HCR 105 for an audit of the DOLIR Vocational Rehabilitation Unit. Something needs to change with the way Workers' Compensation is handled at the DOLIR. The process is extremely detrimental for all involved helping the injured worker, and of course primarily the injured worker.

Sincerely,
Sweetie Kuehu

From: [Adam Yonamine](#)
To: [WAM Testimony](#)
Subject: Testimony for HCR 105, S.D.1
Date: Thursday, April 20, 2017 8:44:05 AM

THE SENATE
TWENTY-NINTH LEGISLATURE
REGULAR SESSION OF 2017

COMMITTEE ON WAYS AND MEANS

Sen. Jill N. Tokuda, Chair
Sen., Donovan Dela Cruz, Vice Chair
Hearing: Friday, April 21, 2017
Time: 9:30 a.m.
Place: Conference Room 211

WRITTEN TESTIMONY OF Adam Yonamine
RE: HCR 105, S.D.1

I have read and agree with the following statement written by Mr. Lowell Chun-Hoon and respectfully request that it be considered:

“The severe problems highlighted by the existing resolution completely justify a full audit by an independent agency outside of the Department of Labor and Industrial Relations because the department has not been responsive when these criticisms have been raised to it directly regarding the Vocational Rehabilitation Unit. This lack of responsiveness is unusual and surprising since DLIR has functioned effectively in many other programs within the Disability Compensation Division. DLIR’s hearing officers and hearings process, for example, generally render thoughtful, well-reasoned decisions in high volume in a timely and efficient fashion.

If the audit is not reinstated, however, the Committee on Ways and Means should still amend HCR 105, S.D.1 because it is unclear and remarkably non-specific in prescribing what actions must be taken to fulfill the mandate of the resolution. We suggest that the existing resolution should therefore include the following language:

To fulfill the purposes of this resolution, the legislature directs the Department of Labor and Industrial Relations to:

1. Create a new and separate working group to address the specific problems and issues raised by this resolution. The new working group shall consist of a minimum of nine persons to include: one representative to the Department of Labor and Industrial Relations; two practicing vocational rehabilitation counselors; two practicing attorneys who are specialists in workers

compensation, one representing employers and insurers and one representing claimants; two representatives from employers and insurers; and two representing unions and/or worker advocacy groups.

2. Convene the group within thirty calendar days of the passage of the present resolution to begin work.
3. Survey vocational rehabilitation counselors, claimants, lawyers specializing in workers compensation, employers, insurers, and unions regarding the issues presented by the present resolution to quantify and document the extent of problems raised by this resolution.
4. The working group shall prepare a report on the issues raised by resolution and specify the tangible actions taken by the Department of Labor and Industrial Relations to remediate those problems, to be submitted to the 2018 Hawaii State legislature, no later than twenty days before the commencement of 2018 Regular Session.”

April 20, 2017

THE SENATE
TWENTY-NINTH LEGISLATURE
REGULAR SESSION OF 2017

COMMITTEE ON WAYS AND MEANS

Senator Jill N. Tokudo, Chair
Senator Donovan Dela Cruz, Vice Chair

Notice of Hearing

DATE: Friday, April 21, 2017
TIME: 9:30 AM
PLACE: Conference Room 211

RE: HCR 105, SD1

In Support of HCR 105 SD1

Dear Chairman Tokuda, Vice Chair Dela Cruz, and Members of the Committee:

My name is Kirsten Harada Yonamine. I am a vocational rehabilitation counselor who has been in practice for over 20 years. I assist injured workers' in their return to work process and am part of a very small community of service providers. I do support HCR 105 SD1 and support of a proposed audit as I have experienced what I feel is inappropriate decision making by the Vocational Rehabilitation Unit against myself and my clients.

If the audit is not reinstated I would recommend that HCR 105 SD1 be amended with a more specific outline of action to ensure that the mandate of the resolution is fulfilled. Currently this is unclear.

I would support that the legislature direct the Department of Industrial Relations to the following:

1. Create a new and separate working group address the specific problems and issues raised by this resolution. The new working group shall consist of a minimum of nine persons to include: one representative to the Department of Labor and Industrial Relations; two practicing vocational rehabilitation counselors; two practicing attorneys who are specialists in workers compensation, one representing employers and insurers and one representing claimants; two representatives from employers and insurers; and two representing unions and/or worker advocacy groups.
2. Convene the group within thirty calendar days of the passage of the present resolution to begin work.

3. Survey vocational rehabilitation counselors, claimants, lawyers specializing in workers compensation, employers, insurers, and unions regarding the issues presented by the present resolution to quantify and document the extent of problems raised by this resolution.
4. The working group shall prepare a report on the issues raised by resolution and specify the actions taken by the Department of Labor and Industrial Relations to remediate those problems, to be submitted to the 2018 Hawaii State legislature, no later than twenty days before the commencement of 2018 Regular Session.

In summary, my clients have been impacted by the current actions of the Vocational Rehabilitation Unit and an audit or working group would help the Disability Compensation Division address and rectify issues raised. Thank you very much for considering my testimony.

Sincerely,

Kirsten Harada Yonamine, M.Ed., CRC LMHC
Vice President of Vocational Management Consultants
Member of International Association of Rehabilitation Professions in Private Sector

My address and phone number is:
715 S. King Street, Suite 410
Honolulu, HI 96813
Phone: 538-8733

THE SENATE
TWENTY-NINTH LEGISLATURE
REGULAR SESSION OF 2017

COMMITTEE ON WAYS AND MEANS

Sen. Jill N. Tokuda, Chair
Sen., Donovan Dela Cruz, Vice Chair
Hearing: Friday, April 21, 2017
Time: 9:30 a.m.
Place: Conference Room 211

RE: HCR 105, S.D.1

Thank you for the opportunity to present testimony on HCR 105, S.D.1. My name is Beverly Tokumine, M. Ed., CRC; I am employed with Vocational Management Consultants, Inc. I have worked as a vocational rehabilitation counselor for 14 years, but within the Vocational Rehabilitation industry for 32 years. **I respectfully support this request for an audit, HCR 105.**

I have experienced many of the problems addressed by this resolution. I had initial evaluation reports, which I have not been able to complete within the normal 45 day time period because medical information was unavailable through no fault of my own. Despite explaining this circumstance, I have been ordered to close my file by the Vocational Rehabilitation Unit of the Department of Labor and Industrial Relations and ordered to cease working as a counselor. Additionally, I have several decisions made by Ms. Guerrero that have been taken to hearing to be over turned, but costing the employer / employee time and funds wasted. In most cases, delays and denials causes great stress and depression to the injured worker.

Recently, I have also had my registration to practice vocational rehabilitation threatened with suspension or termination by the Dept. of Labor's Vocational Rehabilitation Unit for insignificant and unavoidable failures to comply with time deadlines that were never or seldom enforced previously, as many times, medical information from the treating physicians are delayed. Physicians are late in providing information needed, because the medical treatments are denied or approvals for necessary treatments are delayed, due to limited medical resources on the outer islands or Carriers question the needed of treatment by requesting Independent Medical Evaluations be conducted, prior to approving the recommended treatment. The injured workers are the victims in all incidents.

I wrote to Ms. Delphina Guerrero at the VR Unit requesting for explanations, but I received no reply.

Because of the inappropriate decision making by the Vocational Rehabilitation Unit, **I give my full support to an audit of the Unit and ask that you please pass HRC 105-S.D.1.** My clients and employers are also not well served by the current actions of the Unit and an audit would do much to confirm these shortcomings and help the leadership of the Disability Compensation Division rectify these problems. Thank you very much for considering my testimony.

However, if the audit is not reinstated, the Committee on Ways and Means should still amend HCR 105, S.D.1 because it is unclear and non-specific in prescribing what actions must be taken to fulfill the mandate of the resolution. We suggest that the existing resolution should include the following points:

To fulfill the purposes of this resolution, the legislature directs the Department of Labor and Industrial Relations to:

1. Create a new and separate working group to address the specific problems and issues rose by this resolution.

The new working group should consist of representatives to include:

- One representative to the Department of Labor and Industrial Relations;
- Two practicing vocational rehabilitation counselors;
- Two practicing attorneys who are specialists in workers compensation;
- One representing employers and insurers;
- One representing claimants;
- Two representatives from employers and insurers;
- Two representing unions and/or worker advocacy groups.

2. Develop the group within 30 days of the passage of the present resolution to begin work.
3. Conduct a survey with vocational rehabilitation counselors, claimants, lawyers specializing in workers compensation, employers, insurers, and unions regarding the issues presented by the present resolution to quantify and document the problems raised by this resolution.
4. The working group shall develop a report on the issues raised and recommended actions taken by the Department of Labor and Industrial Relations to remediate those problems, to be submitted to the 2018 Hawaii State legislature. These recommendations will be submitted no later than 20 days before the commencement of 2018 Regular Session.

Thank you very much for considering these remarks.

Respectfully Submitted by,

Beverly Tokumine, M. Ed., CRC

cc: File

From: [Stanford Masui](#)
To: [WAM Testimony](#)
Subject: HCR 105 re: Vocational Rehabilitation Branch
Date: Thursday, April 20, 2017 10:19:52 AM

Chair Tokuda and members of the Way and Means Committee:

The Department of Labor and Industrial Relations Vocational Rehabilitation Branch must be investigated or audited for its effectiveness in serving injured workers. Recent decisions seem to have been directed a closure of cases for what are arbitrary reasons, even where the employer and injured worker attorney agrees that enrollment is a proper step. This program is too important to be allowed to cut off a vital and important benefit for getting disabled workers back to the labor force. Please approve the resolution.

--

LAW OFFICES OF MASUI-MASUI

STANFORD H. MASUI * ERIN B.J.H. MASUI

SEVEN WATERFRONT PLAZA STE 400 * 500 ALA MOANA BLVD. HONOLULU, HI. 96813

PH. 543-8346 FAX: 543-2010 ALT FAX: 521-7620

ACCIDENT CASES * WORKPLACE DISCRIMINATION * WORKER'S COMPENSATION

VISIT US AT www.stanfordmasui.com

From: [Stanford Masui](#)
To: [WAM Testimony](#)
Subject: HCR 105 RE: Audit of Voc Rehab
Date: Thursday, April 20, 2017 10:30:39 AM

Chair Tokuda and members of the committee: I would like to add a comment about the portion of the resolution sending the issue to the working group. Essentially, there is a need for an independent audit as the DLIR may have its own interests in maintaining the status quo. It is extremely troubling that the Director opposes an audit. Letters and requests for internal review have not resulted in any change in policy or improvement in decision-making.

--

LAW OFFICES OF MASUI-MASUI

STANFORD H. MASUI * ERIN B.J.H. MASUI

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PH. 543-8346 FAX: 543-2010 ALT FAX: 521-7620

ACCIDENT CASES * WORKPLACE DISCRIMINATION * WORKER'S COMPENSATION

VISIT US AT www.stanfordmasui.com

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, April 20, 2017 12:36 PM
To: WAM Testimony
Cc: kimg027@hawaii.rr.com
Subject: Submitted testimony for HCR105 on Apr 21, 2017 09:30AM

HCR105

Submitted on: 4/20/2017

Testimony for WAM on Apr 21, 2017 09:30AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Gordon Kim	Individual	Comments Only	No

Comments: The following letter to the VR Division reflects the problem with VR. The misreading of the law caused undue prejudice to my client and wasted time and expense for my client as well as the Department of Labor. I requested to meet with the Director on this matter to voice my concerns, but my request went unanswered. April 15, 2016 Hand Delivered Ms. Delphina Guerrero Vocational Rehabilitation Branch Disability Compensation Division Worker's Compensation, Vocational Rehabilitation 830 Punchbowl St., Rm. 209 Honolulu, HI 96813 Claimant : Jacqueline Turner Employer : The Queen's Medical Center DOI : 11/04/11 DCD No. : 21109713 Re : REQUEST FOR RECONSIDERATION OF DENIAL OF CLAIMANT'S VOCATIONAL REHABILITATION PLAN DATED MARCH 29, 2016 AND/OR APPEAL TO DIRECTOR Dear Ms. Guerrero: On April 5, 2016, Queen's Medical Center ("Employer") sent a letter to you Objecting to Claimant Jacqueline Turner's Vocational Rehabilitation Plan ("2nd VR Plan") submitted by Norm Paet, her VR counselor. I received said letter on April 7, 2016, and left a voice mail message for you saying I was submitting a response to the Objection on April 8, 2016. I spoke to you on April 8, 2016, and requested you review my responses to the objections, and I faxed my Responses to you. On April 8, 2016, Norma Paet also hand delivered to you a letter Objecting to the Employer's Objections. On April 11, 2016, Ms. Paet called me and stated you had sent her a VR denial letter dated April 8, 2016, received April 11, 2016. I received the denial letter dated April 8, 2016 on April 12, 2016, and it only says the Employer's letter was reviewed, and there is no mention about reviewing my or Ms. Paet's letters responding the the Employer's Objections. After speaking to you on April 11, 2016, it became apparent you did not review my response to Employer's Objections, Ms. Paet's letter, and the D.C.D. Decision and Order dated January 29, 2016. Therefore, Claimant is requesting Reconsideration of the VR denial based on the following: 1. The facts contained in my letter to you dated April 8, 2016, on the decreased cost of the VR Plan. 2. The D.C.D. Decision and Order dated January 29, 2016. 3. The facts stated in Ms. Paet's 2nd VR Plan and letter to you dated April 8, 2016, showing Step 3 has been more than exhausted. 4. Ms. Paet's April 11, 2016, letter to you. 5. The 2nd VR Plan submitted by Ms. Paet. The D.C.D. Decision and Order clearly state "the rehabilitation provider and the claimant are hereby requested to submit a new rehabilitation plan ..." Your decision is based on the

Employer's letter without reviewing Claimant's responses to the objections is plainly unconscionable. I remind you that H.R.S. § 386-25(a) states in pertinent part that "[t]he purpose of vocational rehabilitation is to restore an injured worker's earning capacity as nearly as possible to the level which the worker was earning at the time of the injury and to return the injured worker to suitable work in the active labor force ..." Section 12-14-1 states "[f]easibility for vocational rehabilitations services means the registered rehabilitation specialist has identified the vocational rehabilitation services needed to assist the employee to obtain and maintain suitable gainful employment..." H.R.S. 386-1 states "restore an employee to suitable gainful employment as quickly as possible in a cost-effective manner." The purpose of the above noted statutes is not to deny VR to an injured employee, putting him or her out on the street with no income. The statutes were enacted because the Legislature recognized the fact that the Employer/Carriers can easily absorb the cost of VR through the premiums they charge for workers' compensation coverage, whereas an injured employee could be left with no income or home, without a job. The Legislature and the Hawaii Supreme Court were aware that this situation could happen and have mandated VR for injured employees who cannot return to their original job. In light of the foregoing, we request that Claimant's Request for Reconsideration for her 2nd VR Plan be approved. Should you still deny Claimant's 2nd VR Plan, we are requesting a Hearing on this matter with the Director. Should you have any questions on the foregoing or require further information, please feel free to call or otherwise contact me. Very truly yours, THE LAW OFFICE OF GORDON KIM
GORDON KIM

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: [Chris Bouslog](#)
To: [WAM Testimony](#)
Subject: HCR 105, SD 1
Date: Thursday, April 20, 2017 11:02:40 AM

THE SENATE
TWENTY-NINTH LEGISLATURE
REGULAR SESSION OF 2017

COMMITTEE ON WAYS AND MEANS

Sen. Jill N. Tokuda, Chair
Sen., Donovan Dela Cruz, Vice Chair
Hearing: Friday, April 21, 2017
Time: 9:30 a.m.
Place: Conference Room 211

WRITTEN TESTIMONY OF

RE: HCR 105, S.D.1

—
To the Esteemed Senators Tokuda, Chair, Dela Cruz, Vice Chair and members of the Ways and Means Committee:

I am an attorney who has practiced in Honolulu since 1983. Since 1989, my practice has concentrated in the personal and industrial injury fields.

I share and adopt the testimony and well reasoned analysis and recommendations submitted to your Committee by Lowell Chun Hoon who states:

“The severe problems highlighted by the existing resolution completely justify a full audit by an independent agency outside of the Department of Labor and Industrial Relations because the department has not been responsive when these criticisms have been raised to it directly regarding the Vocational Rehabilitation Unit. This lack of responsiveness is unusual and surprising since DLIR has functioned effectively in many other programs within the Disability Compensation Division. DLIR’s hearing officers and hearings process, for example, generally render thoughtful, well-reasoned decisions in high volume in a timely and efficient fashion.

If the audit is not reinstated, however, the Committee on Ways and Means should still amend HCR 105, S.D.1 because it is unclear and remarkably non-specific in prescribing what actions must be taken to fulfill the mandate of the resolution. We suggest that the existing resolution should therefore include the following language:

To fulfill the purposes of this resolution, the legislature directs the Department of Labor and Industrial Relations to:

1. Create a new and separate working group to address the specific problems and issues raised by this resolution. The new working group shall consist of a minimum of nine persons to include: one representative to the Department of Labor and Industrial Relations; two practicing vocational rehabilitation counselors; two practicing attorneys who are specialists in workers compensation, one representing employers and insurers and one representing claimants; two representatives from employers and insurers; and two representing unions and/or worker advocacy groups.
2. Convene the group within thirty calendar days of the passage of the present resolution to begin work.
3. Survey vocational rehabilitation counselors, claimants, lawyers specializing in workers compensation, employers, insurers, and unions regarding the issues presented by the present resolution to quantify and document the extent of problems raised by this resolution.
4. The working group shall prepare a report on the issues raised by resolution and specify the tangible actions taken by the Department of Labor and Industrial Relations to remediate those problems, to be submitted to the 2018 Hawaii State legislature, no later than twenty days before the commencement of 2018 Regular Session.”

Very truly yours,

Chris Bouslog

NOTICE: This electronic message and its attachments contain information from the Law Offices of Chris Bouslog that may be privileged and confidential attorney work product or attorney-client communication. The information is intended to be for the use of the addressee only. If you are not the addressee, do not read, distribute, or reproduce this transmission. Any disclosure, copying, distribution, or use of the contents of this message is prohibited. If you received this message in error, please notify the sender immediately by return email or at (808) 550-4995. Thank you.

From: [Laurie Hamano](#)
To: [WAM Testimony](#)
Subject: Regarding HRC 105 SD 1
Date: Thursday, April 20, 2017 12:58:03 PM

April 20, 2017

THE SENATE

TWENTY-NINTH LEGISLATURE

REGULAR SESSION OF 2017

COMMITTEE ON WAYS AND MEANS

Sen. Jill N. Tokuda, Chair

Sen., Donovan Dela Cruz, Vice Chair

Hearing: Friday, April 21, 2017

Time: 9:30 a.m.

Place: Conference Room 211

WRITTEN TESTIMONY RE: HCR 105, S.D.1

The original Resolution HCR 105 asked for an audit of Department of Labor and Industrial Relations as the decisions have been punitive and arbitrary toward the injured workers who are working within the vocational rehabilitation services. The revised HCR 105 SD 1 has taken out the audit portion. Without the request for the audit, it is hoped that the Senate would consider the following:

To fulfill the purposes of this resolution, the legislature directs the Department of Labor and Industrial Relations to:

1. *Create a new and separate working group to address the specific problems and issues raised by this resolution. The new working group shall consist of a minimum of nine persons to include: one representative to the Department of Labor and Industrial Relations; two practicing vocational rehabilitation counselors; two practicing attorneys who are specialists in workers compensation, one representing employers and insurers and one representing claimants; two representatives from employers and insurers; and two representing unions and/or worker advocacy groups.*

2. *Convene the group within thirty calendar days of the passage of the present resolution to begin work.*

3. *Survey vocational rehabilitation counselors, claimants, lawyers specializing in workers compensation, employers, insurers, and unions regarding the issues presented by the present resolution to quantify and document the extent of problems raised by this resolution.*

4. *The working group shall prepare a report on the issues raised by resolution and specify the tangible actions taken by the Department of Labor and Industrial Relations to remediate those problems, to be submitted to the 2018 Hawaii State legislature, no later than twenty days before the commencement of 2018 Regular Session.”*

This would assist the injured workers who have been “victimized” by the decisions made by the VR Unit of Department of Labor Industrial Relations and help the relationship with DLIR and the vocational rehabilitation counselors in the state. This has been what the vocational rehabilitation counselors have been advocating for since the change in the directorship with the Department of Labor and with the VR Unit personnel.

I support the above additions into HCR 105 SD 1.

Thank you for your allowing me to provide testimony for this important issue.

Submitted By:

Laurie H. Hamano M.Ed. CRC LMHC
President of Vocational Management Consultant
715 S. King Street Suite 410
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#5388733
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From: bethambriel@aol.com
To: [WAM Testimony](#)
Subject: testimony HCR 105, S.D. 1
Date: Thursday, April 20, 2017 1:02:08 PM

THE SENATE
TWENTY-NINTH LEGISLATURE
REGULAR SESSION OF 2017

COMMITTEE ON WAYS AND MEANS

Sen. Jill N. Tokuda, Chair
Sen., Donovan Dela Cruz, Vice Chair
Hearing: Friday, April 21, 2017
Time: 9:30 a.m.
Place: Conference Room 211

RE: HCR 105, S.D.1

I agree with Mr. Chun-Hoon, Esq. that the following suggested language should be included:

"To fulfill the purposes of this resolution, the legislature directs the Department of Labor and Industrial Relations to:

1. Create a new and separate working group to address the specific problems and issues raised by this resolution. The new working group shall consist of a minimum of nine persons to include: one representative to the Department of Labor and Industrial Relations; two practicing vocational rehabilitation counselors; two practicing attorneys who are specialists in workers compensation, one representing employers and insurers and one representing claimants; two representatives from employers and insurers; and two representing unions and/or worker advocacy groups.
2. Convene the group within thirty calendar days of the passage of the present resolution to begin work.
3. Survey vocational rehabilitation counselors, claimants, lawyers specializing in workers compensation, employers, insurers, and unions regarding the issues presented by the present resolution to quantify and document the extent of problems raised by this resolution.
4. The working group shall prepare a report on the issues raised by resolution and specify the tangible actions taken by the

Department of

Labor and Industrial Relations to remediate those problems, to be submitted to the 2018 Hawaii State legislature, no later than twenty days before the commencement of 2018 Regular Session."

Respectfully,

Beth Ambriel

From: [Don Kegler](#)
To: [WAM Testimony](#)
Subject: HCR NO. 105 S.D. 1
Date: Thursday, April 20, 2017 2:31:07 PM

***The Senate
Twenty Ninth Legislature
Regular Session of 2017***

Committee on Ways and Means

Sen. Jill N. Tokuda, Chair

Sen. Donovan Dela Cruz, Vice Chair

Hearing: Friday, April 21, 2017

Time: 9:30 AM

Written testimony of Donald L Kegler

RE: H CR 105,S.D.1

It is my recommendation that a full audit of the Department of Labor and industrial relations vocational rehabilitation unit be completed by an independent agency outside of the department. This is necessary in order to address the continuing problems that have been caused by the vocational rehabilitation unit. Should that this audit not be reinstated I believe that the committee on Ways and Means should amend the HCR 105, S.D.1 as it is unclear and not specific regarding what actions to be taken in order to fulfill the mandate of the resolution. It is suggested that the existing resolution include the following language:

To fulfill the purposes of this resolution, the legislature directs the Department of Labor and industrial relations to:

- 1. Create a new and separate workgroup to address the specific problems and issues raised by this resolution. The new working group should consist of a minimum of nine persons to include: one representative for the Department of Labor and industrial relations; two practicing vocational rehabilitation counselors; two practicing attorneys who are specialists in workers compensation;, one representing employers and insurers and one representing claimants: two representatives from employers and insurers; and to representing unions and/or worker advocacy groups.***
- 2. Convene the group within 30 calendar days of the passage of the present resolution to begin work.***
- 3. Survey vocational rehabilitation counselors, claimants, lawyers specializing in workers***

compensation, employers, insurers, and unions regarding the issues presented by the present resolution to quantify and document the extent of problems raised by this resolution.

4. The working group shall prepare a report on the issues raised by resolution and specify the tangible actions taken by the Department of Labor and industrial relations to remediate those problems, to be submitted to the 2018 Hawaii state legislature, no later than 20 days before the commencement of 2018 regular session.

Donald L. Kegler, M.Ed., C.R.C., C.D.M.S., L.M.H.C.
Chief Operating Officer
Vocational Rehabilitation Counselor/Consultant
Case Management Works-Hawaii, Inc.

From: [Marcia Berkowitz](#)
To: [WAM Testimony](#)
Subject: HCR 105 -- Support Audit of VR Unit
Date: Thursday, April 20, 2017 2:32:49 PM

I am in Support of HCR 105

COMMITTEE ON WAYS AND MEANS

Senator Jill N. Tokuda, Chair

Senator Donovan M. Dela Cruz, Vice Chair

DATE: Friday, April 21, 2017

TIME: 9:30 AM

PLACE: Conference Room 211

I am a certified rehabilitation counselor providing services to Hawaii's injured workers since 1982. From 1982 until now, there have been changes to DCD-VR Unit by different administrations and their respective directors. As we all know, the pendulum will swing one way and then another. Of all of these administrations, I never believed the injured worker or the vocational rehabilitation program was in jeopardy, until the present administration. The rehabilitation program is the face of HOPE & CHANGE for the injured worker. I have seen suicidal individuals be restored, life changing medical situations result in new employment for clients and or difficult cases be resolved allowing the injured worker to have a career trajectory post injury in large part due to the DCD vocational rehabilitation program.

What is going on now in the department is significantly different from years past. There is the spirit of the law and the letter of the law. The department is now working to the exact letter of the law and beyond, negating input, serious concerns from certified counselors, injured workers, physicians, attorneys in one fell swoop. The department will tout their "Working Groups" but to date, no significant changes have been made by these groups. The VR counselors who attend report they are stymied in how to go forward and provide excellent service to our injured workers with this department. The department will disavow rehabilitation plans that no one objects too, just the department causing the injured worker to lose hope in the process and become disenfranchised. Letters have been written to counselors that show case an arrogance and ignorance for professional relationships between the department and counselors on the front line.

A program that has flourished and given hope to Hawaii's injured workers who are suffering physically, emotionally and financially should within reason, be supported by the very unit that purports to have their best interest at heart.

Thank you for your time and attention.

Sincerely,

Marcia A. Berkowitz, CRC, LMHC
1975 East Vineyard
Wailuku, Hi 96793

808-298-4142

From: [Ron Barozzi](#)
To: [WAM Testimony](#)
Subject: HCR 105, S.D. 1
Date: Thursday, April 20, 2017 2:43:12 PM

April 20, 2017

THE SENATE

TWENTY-NINTH LEGISLATURE

REGULAR SESSION OF 2017

COMMITTEE ON WAYS AND MEANS

Sen. Jill N. Tokuda, Chair

Sen., Donovan Dela Cruz, Vice Chair

Hearing: Friday, April 21, 2017

Time: 9:30 a.m.

Place: Conference Room 211

WRITTEN TESTIMONY RE: HCR 105, S.D.1

The original Resolution HCR 105 asked for an audit of Department of Labor and Industrial Relations as the decisions have been punitive and arbitrary toward the injured workers who are working within the vocational rehabilitation services. The revised HCR 105 SD 1 has taken out the audit portion. Without the request for the audit, it is hoped that the Senate would consider the following:

To fulfill the purposes of this resolution, the legislature directs the Department of Labor and Industrial Relations to:

- 1. Create a new and separate working group to address the specific problems and issues raised by this resolution. The new working group shall consist of a minimum of nine persons to include: one representative to the Department of Labor and Industrial Relations; two practicing vocational rehabilitation*

counselors; two practicing attorneys who are specialists in workers compensation, one representing employers and insurers and one representing claimants; two representatives from employers and insurers; and two representing unions and/or worker advocacy groups.

2. *Convene the group within thirty calendar days of the passage of the present resolution to begin work.*

3. *Survey vocational rehabilitation counselors, claimants, lawyers specializing in workers compensation, employers, insurers, and unions regarding the issues presented by the present resolution to quantify and document the extent of problems raised by this resolution.*

4. *The working group shall prepare a report on the issues raised by resolution and specify the tangible actions taken by the Department of Labor and Industrial Relations to remediate those problems, to be submitted to the 2018 Hawaii State legislature, no later than twenty days before the commencement of 2018 Regular Session.”*

This would assist the injured workers who have been “victimized” by the decisions made by the VR Unit of Department of Labor Industrial Relations and help the relationship with DLIR and the vocational rehabilitation counselors in the state. This has been what the vocational rehabilitation counselors have been advocating for since the change in the directorship with the Department of Labor and with the VR Unit personnel.

I support the above additions into HCR 105 SD 1.

Thank you for your allowing me to provide testimony for this important issue.

Submitted By:

Ronald L. Barozzi, PhD

Licensed Clinical Psychologist

47-234 Kamehameha Hwy, Kaneohe, HI 96744

808-371-5839

From: [Lanelle Yamane](#)
To: [WAM Testimony](#)
Subject: Testimony: HCR 105, S.D.1
Date: Thursday, April 20, 2017 4:09:11 PM

THE SENATE
TWENTY-NINTH LEGISLATURE
REGULAR SESSION OF 2017

COMMITTEE ON WAYS AND MEANS

Sen. Jill N. Tokuda, Chair
Sen., Donovan Dela Cruz, Vice Chair
Hearing: Friday, April 21, 2017
Time: 9:30 a.m.

Place: Conference Room 211

WRITTEN TESTIMONY OF HCR 105, S.D.1

I am asking for reinstatement of an audit of the VR Unit and if the audit is not reinstated to request an amendment to give the working group specific tasks. The last Senate committee removed the audit and recommended inquiry by a working group.

I also support Mr. Chun-Hoon's testimony and suggestions as follows: "The severe problems highlighted by the existing resolution completely justify a full audit by an independent agency outside of the Department of Labor and Industrial Relations (DLIR) because the department has not been responsive when these criticisms have been raised to it directly regarding the Vocational Rehabilitation Unit. This lack of responsiveness is unusual and surprising since DLIR has functioned effectively in many other programs within the Disability Compensation Division. DLIR's hearing officers and hearings process, for example, generally render thoughtful, well-reasoned decisions in high volume in a timely and efficient fashion.

If the audit is not reinstated, however, the Committee on Ways and Means should still amend HCR 105, S.D.1 because it is unclear and remarkably non-specific in prescribing what actions must be taken to fulfill the mandate of the resolution. We suggest that the existing resolution should therefore include the following language:

To fulfill the purposes of this resolution, the legislature directs the Department of Labor and Industrial Relations to:

1. Create a new and separate working group to address the specific problems and issues raised by this resolution. The new working group shall consist of a minimum of nine persons to include: one representative to the Department of Labor and Industrial Relations; two practicing vocational rehabilitation counselors; two practicing attorneys who are specialists in workers compensation, one representing employers and insurers and one representing claimants; two representatives from employers and insurers; and two representing unions and/or worker advocacy groups.
2. Convene the group within thirty calendar days of the passage of the present resolution to begin work.
3. Survey vocational rehabilitation counselors, claimants, lawyers

specializing in workers compensation, employers, insurers, and unions regarding the issues presented by the present resolution to quantify and document the extent of problems raised by this resolution.

4. The working group shall prepare a report on the issues raised by resolution and specify the tangible actions taken by the Department of Labor and Industrial Relations to remediate those problems, to be submitted to the 2018 Hawaii State legislature, no later than twenty days before the commencement of 2018 Regular Session.”

I am currently providing vocational rehabilitation services to clients that have and continue to be adversely directly affected by the DLIR/DCD/VRU decisions. The VRU does not appear to be considering feedback from the injured worker and VR counselor before rendering decisions that have dire consequences (stoppage of TTD benefits and being cut off from their VR program without clearly stated reasons) that the injured worker and their families. I kindly request reinstating the audit of the VR unit and/or assign a work group with clearly outlined objectives and tasks.

Thank you for considering my testimony.

Lanelle Yamane, MS, CRC, NCC, LMHC

Vocational Rehabilitation Counselor

LATE

April 20, 2017

THE SENATE
TWENTY-NINTH LEGISLATURE
REGULAR SESSION OF 2017

COMMITTEE ON WAYS AND MEANS

Sen. Jill N. Tokuda, Chair
Sen., Donovan Dela Cruz, Vice Chair
Hearing: Friday, April 21, 2017
Time: 9:30 a.m.
Place: Conference Room 211

WRITTEN TESTIMONY OF RE: Support of HCR 105, S.D.1

My name is Kristi Kinsella, M.S.Ed, CRC and I have worked as a vocational rehabilitation counselor for one year in the state of Hawaii. I respectfully request the reinstatement of the audit of the VR unit.

In my short time as a rehabilitation counselor in Hawaii, I have witnessed how vocational rehabilitation can benefit the injured worker both short term and long term. These injured workers are given the opportunity to return to work in a suitable and gainful position with the assistance of an educated and trained rehabilitation professional at the Master's level holding a national certification. It is unfortunate that I have also witnessed many clients having their services terminated due to arbitrary deadlines not being met or arbitrary decision making by an administration whose qualifications are unclear.

Should the audit not be reinstated, it is requested that HCR 105, S.D.1 be amended for clarity on the specific actions to be mandated for the working group. I am in agreement with Mr. Lowell Chun-Hoon's recommendations for the working group mandates as referenced below:

- “1. Create a new and separate working group to address the specific problems and issues raised by this resolution. The new working group shall consist of a minimum of nine persons to include: one representative to the Department of Labor and Industrial Relations; two practicing vocational rehabilitation counselors; two practicing attorneys who are specialists in workers compensation, one representing employers and insurers and one representing claimants; two representatives from employers and insurers; and two representing unions and/or worker advocacy groups.
2. Convene the group within thirty calendar days of the passage of the present resolution to begin work.

3. Survey vocational rehabilitation counselors, claimants, lawyers specializing in workers compensation, employers, insurers, and unions regarding the issues presented by the present resolution to quantify and document the extent of problems raised by this resolution.
4. The working group shall prepare a report on the issues raised by the resolution and specify the tangible actions taken by the Department of Labor and Industrial Relations to remediate those problems, to be submitted to the 2018 Hawaii State legislature, no later than twenty days before the commencement of 2018 Regular Session.”

We as certified rehabilitation counselors aim to provide individualized services to Hawaii’s injured workers and assist them in navigating through the difficult return to work process. The factors affecting each client differ substantially and therefore clients should not be held to a set timeline. I respectfully request the reinstatement of the audit on the VR unit in the decision making for HCR 105, S. D. 1 and/or to provide more specificity in how the working group’s effectiveness will be measured in order to restore a working relationship between VR counselors and the Department of Labor and Industrial Relations VR Unit. Thank you for considering my testimony in your decision making.

Respectfully,

Kristi Kinsella, M.S.Ed, CRC
Vocational Rehabilitation Counselor
Vocational Management Consultants Inc.
715 S King Street Suite 410
Honolulu, HI 96813
808-538-8733

LATE

April 20, 2017

THE SENATE
TWENTY-NINTH LEGISLATURE
REGULAR SESSION OF 2017

COMMITTEE ON WAYS AND MEANS

Sen. Jill N. Tokuda, Chair
Sen., Donovan Dela Cruz, Vice Chair
Hearing: Friday, April 21, 2017
Time: 9:30 a.m.
Place: Conference Room 211

WRITTEN TESTIMONY RE: HCR 105, S.D.1

I am writing a letter of support of the good-faith recommendations put forth by Laurie Hamano, President of Vocational Management Consultant to fulfill the purposes of this resolution, namely:

- 1. Create a new and separate working group to address the specific problems and issues raised by this resolution. The new working group shall consist of a minimum of nine persons to include: one representative to the Department of Labor and Industrial Relations; two practicing vocational rehabilitation counselors; two practicing attorneys who are specialists in workers compensation, one representing employers and insurers and one representing claimants; two representatives from employers and insurers; and two representing unions and/or worker advocacy groups.*
- 2. Convene the group within thirty calendar days of the passage of the present resolution to begin work.*
- 3. Survey vocational rehabilitation counselors, claimants, lawyers specializing in workers' compensation, employers, insurers, and unions regarding the issues presented by the present resolution to quantify and document the extent of problems raised by this resolution.*
- 4. The working group shall prepare a report on the issues raised by resolution and specify the tangible actions taken by the Department of Labor and Industrial Relations to remediate those problems, to be submitted to the 2018 Hawaii State legislature, no later than twenty days before the commencement of 2018 Regular Session."*

These recommendations enable a multi-faceted integrated approach to understanding and finding a comprehensive way to manage the problems, not only between DLNR and VRCs but listening to all the parties (including clients) who have experience in the system and need to communicate with each other about what the problems are and how to together collectively to resolve them in the best interests of the client.

The VRCs have the clients' recovery and employment in their best interest, compared to the employer, insurer, or lawyers and are the hub of all these different groups coming together. If the system needs to be improved then this needs to be a collaborative effort instead of piece meal, make-shift, band-aide, or status-quo job. I attended the prior Workers Compensation Working Group meeting in November 2016 and was shocked at how contrived with the lack of legitimate facts in their presentation. It's important to take the time to get it right instead of going through the same old ways and ending up with a system with continued problems.

I speak with experience within these processes as a wc claimant at UH subject to the manipulations by the employer.

Please listen this time and support the fair-minded efforts of the VRCs to work collaboratively to design an effective system.

Aloha,

Jeannie Lum
1617 Wilhelmina Rise
Honolulu, HI 96816