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LATE TESTIMONY

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February 7, 2017

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

Dear Chair Keith-Agaran, Vice Chair Rhoads, and Members of the Committee:

SUBJECT: Senate Bill No. 413
Relating to Workers' Compensation

S.B. 413 seeks to adopt the U.S. Department of Labor, Office of Workers' Compensation Programs' (OWCP) fee schedule as the applicable charges for workers' compensation medical services in Hawaii rather than the Hawaii Medicare Resource Based Relative Value Scale which is utilized at the present time. While the City and County of Honolulu supports the intent of the bill, it must oppose S.B. 413 as the measure will significantly increase various medical charges under workers' compensation without a corresponding increase in the availability of health care providers for Hawaii's workers' compensation patients.

The measure's findings note various benefits the OWCP purportedly provides to federal workers such as making timely, appropriate and accurate decisions on claims. However, S.B. 413 fails to take into account the significant differences between Hawaii's workers' compensation law and the OWCP.

First, the federal program limits medical treatment to services, appliances and supplies that in the opinion of the OWCP, are likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of monthly compensation. Second, the federal program fully authorizes OWCP to ask physicians besides the attending physician to evaluate an employee and/or file. These include district physicians who are on staff or under contract to respond to questions raised by staff, medical specialists who are selected and paid by OWCP, and referee physicians

selected and paid for by OWCP in cases where there is a conflict of medical opinions in the file.

The OWCP also enables the agency to exclude medical providers from participation in the Federal employees' compensation program if the provider is convicted of fraud, fails to submit full and accurate medical reports or fails to respond to requests for medical information, or furnishes treatment substantially beyond the employee's needs or which fails to meet professionally recognized standards. Finally, the action of the OWCP in allowing or denying a payment under the Federal Employees Compensation Act is final and conclusive for all purposes with respect to questions of law and fact. These are all facets of the federal employee compensation program which are absent or, in the case of medical examiners, greatly curtailed under Hawaii's workers' compensation law. Utilization of the alleged benefits of the OWCP to justify the adoption of its fee schedule for Hawaii's workers' compensation program without a discussion or acknowledgment of the substantial differences between the two is specious.

More importantly, the OWCP fee schedule does not provide any significant monetary incentive for a physician who currently does not take workers' compensation cases to accept a claimant as his or her treating physician. Office Visit Code 99201 which covers new patients is reimbursed at $63.73 under Hawaii's medical fee schedule. The same visit would be reimbursed at $64.59 under OWCP's 2017 fee schedule. Office Visit Code 99212, which would cover the same type of office visit for an established patient, is reimbursed at $60.37 under Hawaii's medical fee schedule and at $64.59 by OWCP's fee schedule.

It is evident by the foregoing that adoption of the OWCP fee schedule will not increase the access to care for Hawaii's workers' compensation claimants. At the same time, utilization of the fee schedule will lead to a significant increase in the number of bill disputes for medical care due to OWCP's fee schedule's lack of specificity in a significant number of areas. The City and County of Honolulu therefore respectfully requests that the measure be held.

Thank you for the opportunity to testify.

Sincerely,

Carolee C. Kubo

Carolee C. Kubo
Director

The Twenty-Ninth Legislature
Regular Session of 2017

LATE TESTIMONY

THE SENATE
Committee on Judiciary and Labor
Senator Gilbert S.C. Keith-Agaran, Chair
Senator Karl Rhoads, Vice Chair
State Capitol, Conference Room 016
Tuesday, February 7, 2017; 9:00 a.m.

STATEMENT OF THE ILWU LOCAL 142 ON S.B. 413
RELATING TO WORKERS' COMPENSATION

The ILWU Local 142 **supports** S.B. 413, which requires the Director of the Department of Labor and Industrial Relations (DLIR) to set workers' compensation medical charges that correspond to the U.S. Department of Labor Office of Workers' Compensation Programs (OWCP) fee schedule instead of the Medicare Resource Based Relative Value Scale applicable to Hawaii, and requires the DLIR to submit a report to the Legislature prior to the 2024 Legislature.

S.B. 413 will allow the federal OWCP fee schedule to be applied in workers' compensation claims for payment of medical fees to physicians and other providers who provide treatment and services to workers injured on the job. The OWCP fee schedule is said to provide higher reimbursements to providers, thus offering them additional incentive to provide services to injured workers. Today, very few physicians are willing to treat injured workers, in part because of the low reimbursements (as compared to reimbursements under the Prepaid Health Care Act) and the burdensome paperwork. Access to physicians is especially difficult on the neighbor islands.

There does not appear to be any reason for the disparity in fees, other than an attempt to reduce premiums. However, since the fee schedules were substantially reduced more than a decade ago, employers have seen significant reductions in workers' compensation premiums. In view of the dearth of physicians willing to treat injured workers, we believe it is time to revisit the payment of fees to physicians for workers' compensation and apply the OWCP fee schedule, which has been successful in incentivizing physicians and getting workers back to work sooner.

S.B. 413 sets a repeal date in 2024, which will allow the OWCP fee schedule to be implemented and evaluated for its effectiveness in increasing access to physicians as well as reducing costs for DLIR, which otherwise would need to review thousands of fee codes to determine appropriate reimbursement. We are confident that the report presented to the 2024 Legislature will provide sufficient evidence to justify continuation of the OWCP fee schedules.

The purpose of workers' compensation is to allow workers injured on the job to receive needed medical treatment in a timely manner in order for them to return to gainful employment as quickly as possible. When workers are unable to find physicians willing to treat them, the process is delayed, the worker's condition deteriorates, and the insurance company is required to pay more in temporary total disability benefits. Ensuring prompt, fair payments to physicians is crucial to helping workers recover from injury and return to work. That is, after all, the intent of the law.

The ILWU urges passage of S.B. 413. Thank you for the opportunity to share our views and concerns on this important measure.

LATE TESTIMONY

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

Work Injury Medical Association strongly support SB 413. Hawaii WC fee schedule has been tied to Medicare Fee schedules and this change is long overdue. The Federal Fee schedule calculates fees base on the following formula:

The Formula is:

$$[(W_{rvu} \times w_{gpci}) + (PE_{rvu} \times pe_{gpci}) + (MP_{rvu} \times mp_{gpci})] \times CF = MAA$$

Where: W_{rvu} = Work relative value units
w_{gpci} = Work geographic practice cost index value
PE_{rvu} = Practice expense relative value units
pe_{gpci} = Practice expense geographic practice cost index value
MP_{rvu} = Mal-practice relative value units
mp_{gpci} = Mal-practice geographic practice cost index value

Please note the explanation of this process. Simply it uses federally accepted factors to estimate the cost of practice expenses and the average cost of the work itself. It also recognizes the geographic difference in insurance rates.

Conversion to this fee would increase current fees in the most common out patient codes by approximately 10%. This is better than current rates but still doesn't address the disparity from private insurance rates. Therefore, the recommendation to study if this fee increase coupled with the certainty of ongoing reasonable analysis of fees will increase medical work force participation is welcomed and prudent.

With our state over 800 physicians short, the rates for caring for injured worker must increase. Our organization estimates it takes 2 ½ to 3 times the amount of paper work compared to an non worker compensation patient. For example, a 15 minute office encounter requires and additional 32-45 minutes of non face to face administrative work by the physician and staff.

Please support SB 413

Sincerely Scott J Miscovich MD
President WIMAH
Work Injury Medical Association of Hawaii

IMS
a Solera company

LATE TESTIMONY

February 7, 2017

To: The Honorable Gilbert S.C. Keith-Agaran, Chair
The Honorable Karl Rhoades, Vice-Chair
And Members of the Senate Committee on Judiciary and Labor
Date: February 7, 2017
Time: 9:00 AM
Place: Conference Room 016

Re: SB 413 Relating to Workers' Compensation Fee Schedule

Chair Keith-Agaran, Vice-Chair Rhoades, and Members of the Committee:

My name is Maria Valladares and I am the Director of Medical Reimbursement for Solera Integrated Medical Solutions, Hawaii's largest provider of payment integrity services to workers' compensation and automobile insurance programs. I am a Registered Nurse, former Neonatal Intensive Care nurse, Certified Professional Coder, and a Certified Professional Medical Auditor.

We are strongly opposed to this measure.

SB 413 has a very noble goals of improving access to medical care for Hawaii's injured workers, however, in my professional opinion, I do not see how it would accomplish this goal by changing the reimbursement basis to the Federal OWCP schedule and away from the Medicare Fee Schedule.

If the goal of the legislature is to increase the payment amounts to healthcare providers treating injured workers – I would recommend you strategically raise the reimbursement rate under the current fee schedule rather than changing to a different reimbursement system. For example, if more primary treating physicians are needed – raise the fees for 10 main physician office visit codes. These can be easily adjusted by the Director and included in the Supplemental Fee Schedule (SFS) as per HRS 386-21.

Interestingly, the last two such SFS proposals (2014 and 2016) from the Department recommended REDUCING Office Visit payments by an average of about 10%, and dramatically increasing payments for Radiology and Labs by 72% and 46% respectively. Fortunately, neither of these proposals was adopted by the Director.

It's important to understand that only approximately 30% of WC medical payments are at Medicare + 10%. 40% currently fall under the Supplemental Fee Schedule and the remaining 30% are not subject to any fee schedule and primarily reflect fees billed by hospitals at their own rates.

In my review of the current OWCP fee schedule, I found it to be 2 years behind Medicare and still actually based on 2015 Medicare. This would be problematic for providers because many of the billing codes have been changed, discontinued, re-valued, or otherwise modified since then – yet OWCP has not kept up. For example, in 2016 the Medicare FS for a TENS unit (code E0730) was $385.89. In 2017 Medicare reduced the TENS unit fee schedule to $72.11. **OWCP is still paying $515.67 for a TENS unit**. This is a good example of OWCP not keeping up with current prices and employers would need to pay 7 times higher for a TENS unit, which does not have any effect on physician retention.

Medicare on the other hand is constantly kept current with input from professional organizations representing every type of medical provider specialty. This is also the reason why group health payors use the Medicare fee schedule as the basis for their reimbursement - because Medicare not only publishes the fee schedule, but also publishes (frequently and in great detail) the coding, reimbursement, and documentation guidelines for each code and code pairs. The fee schedule is only the ingredients, the guidelines are the recipe. OWCP does not publish its coding, reimbursement and documentation guidelines. Absent Medicare as the basis for our fee schedule, the Department of Labor would then have to issue their own guidelines as OWCP does not publish theirs. Without DCD's guidelines, there would be many more bill disputes or overpayments.

The OWCP fee schedule uses the same formula to calculate fees as Medicare does. The RVUs are set for each billing code and the GPCI is set for each US zip code and expense type. The only difference is the conversion factor.

Payment = [(RVU work x GPCI work) + (RVU expense x GPCI expense) + (RVU malpractice insurance cost x GPCI malpractice insurance cost)] x conversion factor

RVU = Relative Value Units GPCI = Geographic Pricing Cost Index

WC claimants on average are younger and healthier than Medicare patients who have chronic conditions in addition to the injuries sustained. By definition, Medicare patients are more difficult and expensive to treat than WC patients due to their co-morbidities. Medicare is the standard among all other payors, particularly Group Health (which pays for treatments to the young and old).

In talking with my staff about this proposal, I discovered that 2 of our auditors who previously worked at physicians' offices had first-hand experience with OWCP in that it did not process payments timely, there was never a customer service representative that could answer questions on coding and documentation, and the provider would end up writing off most of their charges. A few of their client physicians ended up not taking any OWCP patients at all.

To our knowledge, no other state uses the OWCP as the basis for their WC Fee Schedule. They prefer the Medicare fee schedule as the basis for their reimbursement because of their published guidelines – just like group health payors do.

In summary, I do not believe that SB 413 can accomplish its stated goals. Instead it will take us backward to an out of date, poorly documented system dependent on federal oversight. I believe we

can be much more nimble and effective with making smart changes in our current fee schedule to properly and accurately reward the desired outcomes.

Thank you for the opportunity to testify on this measure.

Mahalo,

Maria Valladares, RN, BSN, CPC, CPMA
Director of Medical Reimbursement
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