

DAVID Y. IGE  
GOVERNOR



JAMES K. NISHIMOTO  
DIRECTOR

RYKER WADA  
DEPUTY DIRECTOR

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

March 22, 2017

**TESTIMONY TO THE  
HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE**

For Hearing on Thursday, March 23, 2017  
2:05 p.m., Conference Room 329

BY

JAMES K. NISHIMOTO  
DIRECTOR

**Senate Bill No. 857, S.D. 1, H.D. 1  
Relating to Workers' Compensation**

**(WRITTEN TESTIMONY ONLY)**

TO CHAIRPERSON TAKUMI, VICE CHAIR ICHiyAMA, AND MEMBERS OF THE  
COMMITTEE:

Thank you for the opportunity to provide **comments** on S.B. 857, S.D. 1, H.D. 1.

The purposes of S.B. 857, S.D. 1, H.D. 1, are to establish that employers shall pay all workers' compensation claims for compensable injuries and shall not deny claims without reasonable cause or during a pending investigation; create a presumption of compensability for claims submitted by employees excluded from coverage under the Hawaii Prepaid Health Care Act; establish that employers shall notify providers of service of any billing disagreements and allows providers to charge an additional rate to employers for outstanding balances owed for undisputed services or charges; establish resolution procedures for employers and providers who have a reasonable disagreement over liability for services rendered; and require an employee whose claim is found to be uncompensable to submit reimbursements for services rendered.

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.

First, in light of the statutory presumption of compensability in Section 386-85, HRS, DHRD accepts liability for the vast majority of the approximately 600 new workers’ compensation claims it receives each fiscal year. Only a minority of claims require some additional investigation to confirm that the alleged injury arose out of and in the course of employment.

Second, the proviso following the proposed subsection (b)(2), which presumes a claim compensable if the claimant is excluded from health care coverage under the Hawaii Prepaid Health Care Act, appears superfluous because Section 386-85, already presumes that—in the absence of substantial evidence to the contrary—a claim is for a covered work injury.

Third, the proposed new subsection in Chapter 386, HRS, is internally inconsistent because subsection (a) provides that “the employer shall pay for all medical services required by the employee for the compensable injury” and that “[t]he employer shall not be required to pay for care unrelated to the compensable injury.” However, proposed subsection (b) states that the employer shall not controvert a claim for services while the claim is being “pending investigation.” We note that a claim that is pending investigation is not a “compensable injury” because the employer has not yet accepted the claim as compensable and/or it has not yet been ruled compensable by the Department of Labor.

Fourth, testimony from the Department of Labor and Industrial Relations identified a number of other issues with this bill, including: 1) Section 12-12-45, Controverted workers’ compensation claims, HAR, which mandates the private insurer to pay for medical care during the pendency of a workers’ compensation claim, is not applicable to the State and other governmental employers; 2) shortening the time period from the current sixty calendar days for an employer to contest and/or pay the provider may have unintended consequences leading to further delays in treatment and payment of claims; and 3) injured employees may not have the resources to reimburse

employers.

Finally, in lieu of passing this bill with all of its unresolved issues, we respectfully request consideration be given to deferring this measure pending completion of the respective reports from the Workers' Compensation Working Group convened by House Concurrent Resolution 168 (2015) for the purpose of streamlining the WC process under chapter 386; and the workers' compensation closed claims study mandated by Act 188 (SLH 2016), wherein the legislature found that "a closed claims study is warranted to objectively review whether specific statutory changes are necessary" to the workers' compensation law. Upon delivery of the respective reports to the legislature, the empirical findings and specific recommendations of the working group and closed claims study can inform any legislative initiatives on workers' compensation.

DAVID Y. IGE  
GOVERNOR

SHAN S. TSUTSUI  
LIEUTENANT GOVERNOR



LINDA CHU TAKAYAMA  
DIRECTOR

LEONARD HOSHIJO  
DEPUTY DIRECTOR

STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
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[www.labor.hawaii.gov](http://www.labor.hawaii.gov)  
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March 23, 2017

To: The Honorable Roy M. Takumi, Chair,  
The Honorable Linda Ichiyama, Vice Chair, and  
Members of the House Committee on Consumer Protection and Commerce

Date: Thursday, March 23, 2017  
Time: 2:05 p.m.  
Place: Conference Room 329, State Capitol

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

**Re: S.B. No. 857 S.D.1 H.D.1 Relating to Workers' Compensation**

**I. OVERVIEW OF PROPOSED LEGISLATION**

This proposal seeks to add a new section to chapter 386, Hawaii Revised Statutes (HRS), relating to payment of bills by the employer and specifies a process for bill dispute resolution by the Director. This bill is similar to section 12-15-94, Hawaii Administrative Rules (HAR), which requires the employer to pay for all medical services the nature of the compensable injury and the process of recovery requires. This measure prohibits the employer from contesting a claim for services without reasonable cause or while the claim is pending investigation. This proposal also requires that a claim for service is presumed compensable when submitted by an employee who is excluded from health care coverage under the Hawaii Prepaid Health Care Act.

This proposal amends the period for an employer to contest and pay for services billed from sixty calendar days (referenced in section 12-15-94, HAR) to thirty calendar days (SD1), to an unspecified number of days (HD1) from receipt. Failure to do so allows the provider to increase the total outstanding balance by one per cent per month. This bill also specifies the process for bill dispute resolution and increases the penalty from \$500 (12-15-94, HAR) to \$1,000 that the DLIR Director may assess for failure to negotiate in good faith.

The proposal also holds the employee liable for reimbursement of benefits or payments received under this section to an employer, insurer, or the Special Compensation Fund or to any other source from which the compensation was received when a controverted

claim is found non-compensable.

The Department opposes the measure, especially as key provisions are contradictory and would likely result in legal ambiguities and more disputes in a workers' compensation system already burdened by litigiousness. Moreover, statute and administrative rules already provide a process for bill disputes. Instead, DLIR suggests a study performed by the Legislative Reference Bureau (LRB) replace the contents of the measure.

## II. CURRENT LAW

Section §386-85 Presumptions provides a strong presumption of compensability for work injury claims.<sup>1</sup> Section §386-21 states in part, "The rates or fees provided for in this section ***shall be adequate to ensure at all times*** the standard of services and care intended by this chapter to injured employees."

§386-26 states in part, "In addition, the director shall adopt updated medical fee schedules referred to in section 386-21, and where deemed appropriate, shall establish separate fee schedules for services of health care providers..." The Workers' Compensation Medical Fee Schedule (WCMFS), HAR section 12-15-94 Payment by employer<sup>2</sup>, allows for the following bill dispute process:

When a provider of service notifies or bills the employer, the employer shall inform the provider of service within sixty calendar days of such billing should the employer contest the claim for services. Failure by the employer to notify the provider shall make the employer liable for services rendered until the employer contests further services.

The employer, after accepting liability, shall pay all charges billed within sixty calendar days of receipt of the charges, except for items where there is reasonable disagreement. If more than sixty-calendar days lapse between the employer's receipt of an undisputed bill and date of payment, the billing can be increased by one percent per month of the outstanding balance.

If there is a disagreement, within sixty calendar days of receipt of the bill, the employer shall notify the provider of service of the denial and the reason for the denial, and provide a copy to the claimant. The denial must state that if the provider does not agree with the denial, they may file a bill dispute with the DLIR Director within sixty calendar days after postmark of employer's denial and failure to do so shall be construed as acceptance of the denial.

If the disagreement cannot be resolved between the employer and provider of service, either party may make a written request for intervention to the Director. The Director then sends the parties a notice and the parties can negotiate for thirty-one calendar days to resolve the dispute upon receipt of the Director's notice. If the parties fail to come to an agreement during the thirty-one calendar days, then within fourteen calendar days following the thirty-one day negotiating period, either party can request the Director to review the dispute.

The next step in the process involves the Director sending both parties a second notice requesting they submit position statements and documentation within fourteen days following the receipt of this second notice. The Director reviews the positions of both parties and renders an administrative decision. A service fee of \$500 can be assessed at the discretion of the Director against either or both parties who fail to negotiate in good faith.

Prepaid Health Care, section 12-12-45 HAR regarding Controverted workers' compensation claims, allows for the following:

"In the event of a controverted workers' compensation claim, **the health care contractor shall pay or provide** for the medical services in accordance with the health care contract and notify the Department of such action. If workers' compensation liability is established, the **health care contractor shall be reimbursed** by the workers' compensation carrier such amounts authorized by chapter 386, HRS, and chapter 10 of title 12, administrative rules."

Under the Hawaii Prepaid Health Care Act, employers are required to provide healthcare coverage for their eligible employees. However, employees who do not work 20 hours per week for 4 consecutive weeks are not entitled to PHC coverage because they have not met the eligibility requirement for health care coverage, but they are not "excluded" from coverage. In addition, employees may sign a waiver saying they do not want PHC coverage from the employer because they have other PHC coverage.

### **III. COMMENTS ON THE SENATE BILL**

DLIR opposes the measure as its intent is already provided for in the law and offers the following comments:

- The proposed subsections 386- (a)(b) of this proposal are contradictory. Paragraph (a) states the employer shall pay, but (b) allows the employer to deny a claim with reasonable cause. DLIR is concerned with the administrative or adjudicatory complications this contradiction will cause.
- DLIR suggests the measure should address the Prepaid healthcare contracts that exclude WC in violation of section HAR 12-12-45. When the employer denies compensability and the PHC provider denies coverage, then the employer has both significant leverage and the economic advantage over the worker. DLIR suggests the measure be replaced with a study by LRB into this issue.
- HD1 adds to subsection (b) that the claim is presumed compensable when submitted by an employee excluded by the PHC Act (there are numerous exclusions). The Department does not believe the intent of the measure is to be all-inclusive.

- DLIR notes that claims for compensation are already presumed, in the absence of substantial evidence to the contrary, to be claims for covered work injuries (§386-85). The pending investigation clause in the proposed section (b) (2) (page 2, lines 11-17) adds a second presumption and DLIR does not understand the intent of the second presumption. Moreover, it is unclear what the relationship is between that clause and HAR 12-12-45 Controverted workers' compensation claims.
- The Department has concerns regarding shortening the time period from sixty calendar days to an unspecified amount of calendar days for the employer/carrier to contest and pay the provider of service. If they do not have adequate time to review the case thoroughly, they may tend to contest the claim in order to protect their rights while reviewing the claim in more detail. This may have an unintended consequence leading to further delays in treatment and payment of claims.
- The Department opines that the current dispute resolution procedure and timelines in HAR section 12-15-94 Payment by employer, are adequate when properly implemented. Because the Department realizes that certain insurers, attorneys, and claimants may not negotiate in good faith in order to delay the resolution process, the Department is seeking approval in this year's biennial budget for two DCD Facilitator positions with the primary responsibility of ensuring proper implementation of the statutes and timely advancement of case investigations.
- HD1 added subsection (g) to this bill that requires employees to reimburse all benefits or payments received under this section back to the employer, insurer, or the Special Compensation Fund, or to the source from which payment was received if the claim is found to be non-compensable. However, it is often the case that the injured employee may not have the resources to reimburse the payers.

## **FOOTNOTES**

<sup>1</sup> **§386-85 Presumptions.** In any proceeding for the enforcement of a claim for compensation under this chapter it shall be presumed, in the absence of substantial evidence to the contrary:

(1) That the claim is for a covered work injury;

(2) That sufficient notice of such injury has been given;

(3) That the injury was not caused by the intoxication

of the injured employee; and

- (4) That the injury was not caused by the wilful intention of the injured employee to injure oneself or another.

<sup>2</sup> **§12-15-94 Payment by employer.** (a) The employer shall pay for all medical services which the nature of the compensable injury and the process of recovery require. The employer is not required to pay for care unrelated to the compensable injury.

(b) When a provider of service notifies or bills an employer, the employer shall inform the provider within sixty calendar days of such notification or billing should the employer controvert the claim for services. Failure of the employer to notify the provider of service shall make the employer liable for services rendered until the provider is informed the employer controverts additional services.

(c) The employer, after accepting liability, shall pay all charges billed within sixty calendar days of receipt of such charges except for items where there is a reasonable disagreement. If more than sixty calendar days lapse between the employer's receipt of an undisputed billing and date of payment, payment of billing shall be increased by one per cent per month of the outstanding balance. In the event of disagreement, the employer shall pay for all acknowledged charges and shall notify the provider of service, copying the claimant, of the denial of payment and the reason for denial of payment within sixty calendar days of receipt. Furthermore, the employer's denial must explicitly state that if the provider of service does not agree, the provider of service may file a "BILL DISPUTE REQUEST" to include a copy of the original bill with the director within sixty calendar days after postmark of the employer's objection, and failure to do so shall be construed as acceptance of the employer's denial.

(d) In the event a reasonable disagreement relating to specific charges cannot be resolved, the employer or provider of service may request intervention by the director in writing with notice to the other party. Both the front page of the billing dispute request and the envelope in which the request is mailed shall be clearly identified as a "BILLING DISPUTE REQUEST" in capital letters and in no less than ten point type. The director shall send the parties a notice and the parties shall negotiate during the thirty-one calendar days following the date of the notice from the director. If the parties fail to come to an agreement during the thirty-one calendar days, then within fourteen calendar days following the thirty-one day negotiating



period, either party may file a request, in writing, to the director to review the dispute with notice to the other party. The director shall send the parties a second notice requesting the parties file position statements, with substantiating documentation to specifically include the amount in dispute and a description of actions taken to resolve the dispute, within fourteen calendar days following the date of the second notice from the director. The director shall review the positions of both parties and render an administrative decision without hearing. A service fee of up to \$500 payable to the State of Hawaii General Fund will be assessed at the discretion of the director against either or both parties who fail to negotiate in good faith.

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

March 23, 2017

The Honorable Roy M. Takumi, Chair  
The Honorable Linda Ichiyama, Vice Chair  
and Members of the Committee  
on Consumer Protection & Commerce  
The House of Representatives  
State Capitol, Room 329  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Takumi, Vice Chair Ichiyama, and Members of the Committee:

**SUBJECT: Senate Bill No. 857, SD1, HD1  
Relating to Workers' Compensation**

S.B. 857, SD1, HD1 greatly restricts an employer's ability to deny workers' compensation claims pending investigation. The City and County of Honolulu strongly opposes the measure as it limits the employer's ability to perform its due diligence and is premised on findings that are factually unsupported.

The bill initially indicates that insurers seem to automatically deny workers' compensation claims "pending investigation." However, industry practices do not support the claim. For example, the City and County of Honolulu, which handles approximately 1800 new claims a year, does not employ an across the board policy of denying all claims pending investigation.

S.B. 857, SD1, HD1 also fails to recognize that employees whose claims have been denied pending investigation are able to use their private medical insurance until a decision has been rendered regarding compensability. In fact, Hawaii's Prepaid Health Care law specifically mandates that contracted group health is responsible for the medical care of the employee during the investigatory period. Hawaii Administrative Rules ("HAR") Section 12-12-45, entitled "Controverted workers' compensation claims," provides that:

March 23, 2017

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In the event of a controverted workers' compensation claim, the health care contractor shall pay or provide for the medical services in accordance with the health care contract and notify the department of such action. If workers' compensation liability is established, the health care contractor shall be reimbursed by the workers' compensation carrier such amounts authorized by chapter 386, HRS, and chapter 10 of title 12, administrative rules.

Assuming the overarching goal of the measure is to provide injured workers with necessary health care absent any delays, the City would recommend that S.B. 857, SD1, HD1 be amended to statutize HAR 12-12-45 as part of Hawaii Revised Statutes ("HRS") Chapter 386 rather than the modified version of HAR 12-15-94 that is currently being proposed. Such an amendment would further ensure that individuals' private medical insurance would provide the necessary medical care to an employee whose workers' compensation claim was denied pending investigation.

However, rather than requiring group health to follow the law, the measure instead forces the employer to pay claims for services for cases which are denied pending investigation. This is patently unfair to the employer and will undoubtedly lead to an increase in questionable claims being filed. Moreover, under the bill, the sole recourse for an employer to recover its payments after the claim is determined to be non-compensable is from the employee, who is likely unable to repay the costs of benefits he or she received. As a result, the measure should be amended to require the health provider to also be responsible for reimbursement of any payments it received for the non-compensable claim. The service can then be rebilled under group health as it should have been in the first place.

As it stands, a number of other changes to HRS Chapter 386 proposed by S.B. 857, SD1, HD1 are likewise problematic. For example, the last sentence in subsection (f) is inconsistent with the rest of the subsection. That portion of the measure sets forth procedures to follow in the event of a bill dispute, including authorizing the Director of Labor to assess an administrative fine should a party fail to negotiate in good faith. However, unlike the administrative rule from which it is derived, S.B. 857, SD1, HD1 goes on to mandate that denial of payment without reasonable cause shall be considered a failure to negotiate in good faith. Insofar as a denial of payment is at best a precursor to a bill dispute but nevertheless completely unrelated to the negotiations themselves, the proposed addition is clearly at odds with itself.

Finally, reducing the time to review and pay a bill from sixty (60) days following receipt of the same as currently required by rule, to the thirty (30) days mandated under the measure is extremely problematic for the City. That amount of time simply does not

March 23, 2017  
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provide a long enough period for most, if not all, companies to review and adjust the bills and then have a separate department prepare and mail out the check to the provider. As the Department of Labor and Industrial Relations noted in its testimony before the Senate, shortening the time in said fashion will likely have the unintended consequence of further delaying the approval of treatment and payment of claims.

Based on the foregoing, the City respectfully requests that the measure be held. Thank you for the opportunity to testify.

Sincerely,

  
for Carolee C. Kubo  
Director



Chamber of Commerce HAWAII  
*The Voice of Business*

**Testimony to the House Committee on Consumer Protection & Commerce  
Thursday, March 23, 2017 at 2:05 P.M.  
Conference Room 329, State Capitol**

**RE: SENATE BILL 857 SD1 HD1 RELATING TO WORKERS' COMPENSATION**

Chair Takumi, Vice Chair Todd, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") opposes SB 857 SD1, which establishes that employers shall pay all workers' compensation claims for compensable injuries and shall not deny claims without reasonable cause or during a pending investigation; creates a presumption of compensability for claims submitted by employees excluded from coverage under the Hawaii Prepaid Health Care Act; establishes that employers shall notify providers of service of any billing disagreements and allows providers to charge an additional rate to employers for outstanding balances owed for undisputed services or charges; establishes resolution procedures for employers and providers who have a reasonable disagreement over liability for services rendered; requires an employee whose claim is found to be un-compensable to submit reimbursements for services rendered.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,600+ businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

We oppose this bill as curtailing the rights of employers. Since presumption is a part of Hawaii's workers' compensation law, employers should have the ability to investigate injuries, treatment progress and other related issues. We believe that present HAR in this area already covers this process. This bill is very likely to cause increased workers' compensation costs, and overshadow the rule-making powers of the Department of Labor and Industrial Relations.

Thank you for the opportunity to testify.

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# GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

March 23, 2017

TO: HONORABLE ROY TAKUMI, CHAIR, HONORABLE LINDA ICHIYAMA,  
VICE CHAIR AND MEMBERS OF THE COMMITTEE ON CONSUMER  
PROTECTION AND COMMERCE

SUBJECT: **OPPOSITION TO S.B. 857, SD1, HD1, RELATING TO WORKERS' COMPENSATION.** Establishes that employers shall pay all workers' compensation claims for compensable injuries and shall not deny claims without reasonable cause or during a pending investigation. Creates a presumption of compensability for claims submitted by employees excluded from coverage under the Hawaii Prepaid Health Care Act. Establishes that employers shall notify providers of service of any billing disagreements and allows providers to charge an additional rate to employers for outstanding balances owed for undisputed services or charges. Establishes resolution procedures for employers and providers who have a reasonable disagreement over liability for services rendered. Requires an employee whose claim is found to be uncompensable to submit reimbursements for services rendered. (SB857 HD1)

COMMITTEE HEARING

DATE: March 23, 2017  
TIME: 2:05 p.m.  
PLACE: Conference Room 329

Dear Chair Takumi, Vice Chair Ichiyama and Committee Members,

The General Contractors Association of Hawaii (GCA) is an organization comprised of over five hundred general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. The GCA's mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

GCA is **opposed** to S.B. 857, SD1, HD1, Relating to Workers' Compensation which proposes to require that employers pay all workers compensation claims for compensable injuries and shall not deny claims without reasonable cause or during a period of investigation. The bill also proposes to require notification by the employers under certain conditions, among other things.

While GCA understands and appreciates the need to ensure the injured worker is provided with the resources necessary to treat a work related injury, this proposal fails to address such need and is inapposite of what the workers compensation system provides. In order to receive treatment necessary for an injured worker the current system in place provides safeguards which would allow the employer to request additional information if there is a question as to a determination

of compensability. This measure mandates payment of all claims without confirming whether or not the compensable injury is confirmed. The added provision that indicates that the employee reimburse the source from which compensation was received for services rendered whenever a claim is found to be non-compensable provides no safeguard to the employer who would require additional resources to attempt to collect such payments from an employee.

For these reasons, GCA respectfully requests this bill be held. Thank you for the opportunity to express our opposition to S.B. 857, SD1, HD1.



**SB 857sd1, hd1 Relating to Workers' Compensation  
House CPC Hearing  
Thursday, March 23, 2017 – 2:05 pm  
Room 329  
Position: Support**

Chair Takumi and Members of the House CPC Committee:

I am Gregg Pacilio, PT and Board President of the Hawaii Chapter of the American Physical Therapy Association (HAPTA), a non-profit professional organization serving more than 300 member Physical Therapists and Physical Therapist Assistants. Our members are employed in hospitals and health care facilities, the Department of Education school system, and private practice. We are movement specialists and part of the spectrum of care for Hawaii. We provide rehabilitative services for infants and children, youth, adults and the elderly. Rehabilitative services are a vital part of restoring optimum functioning from neuromusculoskeletal injuries and impairments.

HAPTA supports this measure to allow injured workers access to medical care despite a pending investigation.

While we agree that an insurer has the right to investigate compensability of claims, delaying treatment of legitimately injured workers goes against the intent of the WC law. Prompt and needed care should be afforded all legitimately deserving injured workers.

Currently during "pending investigations" the provider is at risk if care is provided and then must wait for payment settlement. Such claims to pre-paid plans will usually get denied because the provider marks that the patient was injured at work. Investigations can take months and if the provider is challenged, the provider must wait for a DLIR hearing date which takes even longer. This is very difficult for small private practices that provide care to the injured worker and who are not receiving payment for treatment.

If it is "presumed compensable" then the WC carrier must pay the provider. If the claim is deemed non-compensable after investigation, then the provider has something in hand to bill the pre-paid plan, and return funds to WC. This written non-compensable after investigation notice is needed from the WC carrier in order to bill and get paid from the pre-paid health plan.



The following may be more applicable to Administrative Rules rather than a bill. We respectfully request mention of this in the Committee Report:

1. We recommend that DLIR allow email or fax for verification from the provider when 30 day requirements are required by DLIR.
2. Enforcement of applied interest to late payments by insurers.

HAPTA feels that if after investigation a claimant is found to have defrauded the insurer, the insurer should be able to recover any and all costs related to such fraud. The medical provider, unless found to be complicit in the fraud, should not be liable to return any fees for service provided in good faith and appropriately performed, billed, and documented.

This measure would provide incentive for insurers to investigate only cases which are truly questionable.

Thank you for the opportunity to testify. Please feel free to contact Derrick Ishihara, HAPTA's Workers' Compensation Committee Chair at 808-221-8620 for further information.

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, March 22, 2017 10:47 AM  
**To:** CPCtestimony  
**Cc:** moore4640@hawaiiantel.net  
**Subject:** \*Submitted testimony for SB857 on Mar 23, 2017 14:05PM\*

**SB857**

Submitted on: 3/22/2017

Testimony for CPC on Mar 23, 2017 14:05PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Douglas Moore	Hawaii Injured Workers Association	Support	No

Comments:

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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

## TESTIMONY OF LINDA O'REILLY

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HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE  
Representative Roy M. Takumi, Chair  
Representative Linda Ichiyama, Vice Chair

Thursday, March 23, 2017  
2:05 p.m.

### **SB 857, SD1, HD1**

Chair Takumi, Vice Chair Ichiyama, and members of the Committee on Consumer Protection and Commerce, my name is Linda O'Reilly, Assistant Vice President of Claims . WorkersqCompensation of First Insurance Company of Hawaii. I am testifying today on behalf of Hawaii Insurers Council which is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately forty percent of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **opposes** this bill.

SB 857, SD1, HD1 proposes to reduce an employersqamount of time in which to determine compensability, says the employer shall not controvert a claim for services while the claim is pending investigation, and impose fines for those employers who continue doing so without reasonable cause. The bill also makes claims for those %excluded from health care coverage under the Hawaii Prepaid Health Care Act+ presumed compensable.

The bill states in part, that in many cases, insurers seem to automatically deny claims %pending investigation,+while for months, the patient is at times unable to use private insurance or get money in which to live.

HIC respectfully disagrees with this assessment and is unaware of any insurer who imposes such a practice. In fact, the large majority of workers' compensation claims are processed initially without delay and benefits are issued in compliance with H.R.S. 386 and related Administrative Rules.

However, there are a minority of claims that require additional information before a determination of compensability can be rendered.

If an employer is not required to pay for care unrelated to the compensable injury, we believe that 60 days as allowed in HAR 12-15-94 is the appropriate amount of time before a determination of compensability can be rendered. During this 60 day period, many employers must wait for the DCD to assign a case number which itself may take 14-21 days before the employer is able to issue a subpoena of medical records. These records are just one piece of the investigation an employer will use in their determination of compensability. If the period of time is less than 60 days, the bill would be controverted and will result in a dispute for payment adding to the paperwork flowing into the DCD.

SB 857, SD1, HD1 presumes compensable, a claim for those ~~%~~excluded from health care coverage under the Hawaii Prepaid Health Care Act.+ If the injured worker has or does not have health insurance is not a determining factor as to whether the injury is work-related. This provision mandates compensability solely based on the existence of health insurance. Whether the injured worker has health insurance or not is outside the control of the workers' compensation insurer and mandating the claim be compensable based on this deprives the insurer of due process. The language in the bill under Section 2(a) correctly states that, ~~%~~The employer shall not be required to pay for care unrelated to the compensable injury.+ Section 2(b)(2) however, contradicts that by mandating a certain class of injured workers be ~~%~~presumed compensable.+

Secondly, the provision to presume compensable a claim where the injured worker has no health insurance coverage will also promote fraud if injured workers know that a claim cannot be controverted. If it is later determined that it is not a work-related injury, it is not realistic to expect that the injured worker will repay benefits that were not due.

Finally, by mandating a certain class of injured workers' claims be presumed compensable, these persons would be treated differently than everyone else in the workers' compensation system and contradicts provisions in another section of existing law, 386-3, which excludes coverage for intentional acts to injure oneself or another, certain claims for mental stress and by the employee's intoxication.

The provisions in this bill will add unnecessary delay and costs to the system. We ask that this bill be held.

Thank you for the opportunity to testify.

The Twenty-Ninth Legislature  
Regular Session of 2917

THE HOUSE OF REPRESENTATIVES  
Committee on Consumer Protection and Commerce  
Representative Roy M. Takumi, Chair  
Representative Linda Ichiyama, Vice Chair  
State Capitol, Conference Room 329  
Thursday, March 23, 2017; 2:05 p.m.

**STATEMENT OF THE ILWU LOCAL 142 ON S.B. 857 SD 1 H.D. 1  
RELATING TO WORKERS' COMPENSATION**

The ILWU Local 142 supports S.B. 857 SD 1 H.D. 1, which establishes that employers shall pay all workers' compensation claims for compensable injuries and shall not deny claims during a pending investigation or without reasonable cause.

The workers' compensation law, as originally enacted 100 years ago, was intended to address the need to compensate workers who are injured on the job. The law provided that the injury would be presumed to be compensable if it occurred at the workplace or in the course of employment. In exchange for this presumption of compensability the worker agreed not to sue the employer for the injuries. The workers' compensation law was a no-fault law and worked fine for decades.

In recent years, however, workers' compensation has become increasingly contentious and adversarial. Employers often deny liability for a claim "pending investigation". During this investigation period, which could last for weeks and months, physicians would decline to see, much less treat, an injured worker. Without proper treatment, including medication, the workers' injuries would worsen. Without acceptance of compensability, the worker would be without income. A desperate situation quickly develops and the goal of returning the injured worker to his job or other gainful employment becomes further out of reach.

S.B. 857 SD 1 H.D. 1 is a thoughtful and effective means of alleviating this problem. It places the burden squarely on the employer to accept liability for the claim or provide an explanation of reasonable cause to deny – even during an investigation. This will force an expeditious investigation, rather than the current practice of delay. The employer has the resources and is in a position to conduct a speedy investigation while the injured worker simply cannot afford to be put through a lengthy delay. If the ultimate goal of workers' compensation is to return the worker to his job, what possible purpose would it serve to leave the injured worker without medical care and income.

We also have some concerns over the language added to the SD 1 at page 5, subsection (g), however, we hope this language can be addressed as the bill moves forward.

The ILWU urges passage of S.B. 857 SD 1 H.D. 1. Thank you for the opportunity to provide testimony on this measure.

## WIMAH

2909 Waialae Avenue #01  
Honolulu, HI 96826  
wimah808@gmail.com



**To: Rep. Roy M. Takumi, Chair  
Rep. Linda Ichiyama, Vice-Chair  
Members of the Committee on Consumer Protection & Commerce**

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WIMAH Tax ID  
46-0870762

**Date: Thursday, March 23, 2017**

**Time: 2:05 p.m.**

**Place: Conference Room 329  
State Capitol**

**415 South Beretania Street**

### **Testimony in Support of SB857**

Work Injury Medical Association of Hawaii (WIMAH) is a nonprofit trade organization of healthcare providers dedicated and devoted to promoting the best practices and policies for the injured workers of Hawaii and the providers who take care of them and to enhance the quality of life of injured workers in this community. WIMAH represents the majority of physicians treating injured workers in the state of Hawaii.

SB857 establishes that employers shall pay all workers compensation claims for compensable injuries and shall not deny claims without reasonable cause or during a pending investigation. It codifies into statute Hawaii Administrative Rules 12-15-94 (Payment by Employer) and amends and clarifies it.

As Section 1 of SB857 states, Hawaii's existing workers' compensation system has been plagued by delays and denials, and in many of those cases, insurers seem to automatically deny the claim "pending investigation". These investigations may include reviewing reports from an independent medical examiner, interviewing other employees, looking at videotapes, or combing through old medical records for evidence that the workplace injury was related to a pre-existing condition. While the insurer considers, sometimes for months, the patient is at times unable to use private insurance or get money for which to live. Therefore, the intent of this bill, to limit employers' use of denying a claim pending investigation and impose fines and penalties for those employers who continue doing so without reasonable cause, is laudable.

Thank you for your consideration.

Scott J. Miscovich, MD  
President and Director



**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, March 22, 2017 11:38 AM  
**To:** CPCtestimony  
**Cc:** frankvannatta@hotmail.com  
**Subject:** Submitted testimony for SB857 on Mar 23, 2017 14:05PM

**SB857**

Submitted on: 3/22/2017

Testimony for CPC on Mar 23, 2017 14:05PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
James Van Natta	Individual	Support	No

Comments: This measure will go a long way to help injured workers. More often than not, these cases are found to be compensable. These individuals go for months without any funds to support their families.

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Dr. Joni Kroll, DAc, LAc  
320 Uluniu Street, #2  
Kailua, Hawaii 96734  
808-262-4550  
KailuaAcupuncture.com

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**To:** Rep Roy M Takumi, Chair  
Rep Linda Ichiyama, Vice Chair and  
Committee on Consumer Protection & Commerce

**Date:** Thursday, March 23, 2017

**Time:** 2:05pm

**Place:** Conference Room 329

**RE: Strong Support for SB 857, SD1, HD1**

Dear Chair Takumi and members of the Consumer Protection & Commerce Committee,

I am in strong support of this bill. As an acupuncture practitioner, I have been treating worker's compensation patients in Hawaii for the past 28 years. Too many times, insurers have used "pending investigation" to delay proper claim payments. This puts an unfair burden on practitioners who risk continuing to treat the patient without guarantee of payment.

Thank you for your consideration,

Sincerely,

Dr. Joni Kroll, D.Ac.

## CPCtestimony

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From: Joseph.R.Dicostanzo@kp.org  
Sent: Wednesday, March 22, 2017 8:16 AM  
To: CPCtestimony  
Subject: SB 857- Denied Pending Investigation - Thurs 3/23 @ 2:05pm, Rm 329

To: Rep Roy M Takumi, Chair  
Rep Linda Ichiyama, Vice Chair and  
Committee on Consumer Protection & Commerce

Date: Thursday, March 23, 2017  
Time: 2:05pm  
Place: Conference Room 329

RE: Strong Support for SB 857, SD1, HD1

Dear Chair Takumi and members of the Consumer Protection & Commerce Committee,

I am a physician who treats Work Comp patients here in Hawaii. I want to strongly support this bill. It is my opinion this is probably the most important bill pertaining to Work Comp I have seen this year and there are several very important bills. From what I have observed DENIED PENDING INVESTIGATION is probably the #1 way patients/workers suffer under the system as there are interminable delays in their lost wages as well as treatments. Even if the carrier eventually accepts the claim I have seen patients rendered almost destitute waiting for wage replacement as well as treatment.

Sincerely,  
Joseph DiCostanzo MD  
Kaiser Permanente Occupational Health Services

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, March 21, 2017 2:19 PM  
**To:** CPCtestimony  
**Cc:** KarinNomura1@gmail.com  
**Subject:** Submitted testimony for SB857 on Mar 23, 2017 14:05PM

**SB857**

Submitted on: 3/21/2017

Testimony for CPC on Mar 23, 2017 14:05PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Karin Nomura	Individual	Support	No

Comments: Especially since it seems some while made for assistance of employees, can refuse and say "it's your job" and end it at that...

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From: lyna <aculyna@gmail.com>  
Sent: Tuesday, March 21, 2017 8:34 PM  
To: CPCtestimony  
Subject: SB857, SD1, HD1

**To:** Rep Roy M Takumi, Chair  
Rep Linda Ichiyama, Vice Chair and  
Committee on Consumer Protection & Commerce

**Date:** Thursday, March 23, 2017

**Time:** 2:05pm

**Place:** Conference Room 329

**RE: Strong Support for SB 857, SD1, HD1**

Dear Chair Takumi and members of the Consumer Protection & Commerce Committee,  
It's been a long 25 plus years since the acupuncture reimbursement fees have been addressed since  
it's creation.

That's a very long time to wait for a raise. The educational requirements have definitely grown and  
tuitions have soared since

I attended the Masters and Doctoral program for Acupuncture and Oriental Medicine nearly 30 years  
ago.

The cost of running a business and keeping up with continuing education in my field has far exceeded  
the estimated cost of living index.

Please support this bill so that we will not have to come back again and again to ensure the viability  
of our profession so that we may continue to serve our community.

Thank you for your attention to this important matter.

Sincerely,

Lyna Morimoto, Doctor of Acupuncture  
Honolulu

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, March 21, 2017 7:09 PM  
**To:** CPCtestimony  
**Cc:** waihoalow@gmail.com  
**Subject:** \*Submitted testimony for SB857 on Mar 23, 2017 14:05PM\*

**SB857**

Submitted on: 3/21/2017

Testimony for CPC on Mar 23, 2017 14:05PM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dr. Wai Low	Individual	Support	No

Comments:

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# WAYNE H. MUKAIDA

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HONOLULU, HAWAII 96813

TEL & FAX: (808) 531-8899

March 21, 2017

COMMITTEE ON CONSUMER PROTECTION & COMMERCE  
Rep. Roy M. Takumi, Chair

Re: SB 857, SD1, HD1, Relating to Workers' Compensation  
Hearing: March 23, 2017, 2:05 p.m.

Chairman, and members of the Committee:

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 support SB 857, SD1, HD1, Relating to Workers' Compensation, however the measure must be substantially amended.

It is critical to understand three fundamental premises of the Workers' Compensation statute:

1. The statute is a no-fault statute;
2. Per HRS § 386-85, it is presumed that all claims are for a covered injury; and
3. The Supreme Court has instructed that this presumption applies from the outset.

The statute was designed to provide prompt benefits to all workers who are injured due to work. There is no provision in the statute or regulations which allows an employer to "deny a claim pending investigation." Such a concept turns the statute upside down.

If a person breaks his leg at home, he can get immediate medical care under his health plan. A person who injures his leg at work should also be able to receive immediate medical care under workers' compensation. No one injured at work should be denied his workers' compensation wage replacement for months while an employer conducts its "investigation." Anything in Section 1 of the bill which suggests that the law allows an employer to deny a claim "pending investigation" is simply incorrect, and seriously undermines the fundamental premises of the statute.

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

March 21, 2017

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Benefits should be paid from the outset without regard to fault. The employer can continue to do its investigation reasonably, and if facts discovered support a denial, then the employer can properly contest the claim at that time.

I. Section 1 of the bill should emphasize that “denials pending investigation” are not allowed.

As presently written, Section 1 of the bill suggests that “denials pending investigation” are allowed under the workers’ compensation statute. There is no such provision in the statute, and that Section 1 should be amended to directly state that employers are not allowed to deny a claim pending investigation. If an employer has no basis to deny a claim, that employer should not be allowed to deny medical and wage benefits to a worker.

II. Section 396- (a) should be stricken.

Section 396-\_\_ (a) of the bill provides that the employer shall pay for all medical services. The language differs from what is presently stated in HRS § 386-21:

(a) Immediately after a work injury sustained by an employee and so long as reasonably needed the employer shall furnish to the employee all medical care, services, and supplies as the nature of the injury requires. The liability for the medical care, services, and supplies shall be subject to the deductible under section 386-100.

"Medical care", "medical services", and "medical supplies" are defined terms in HRS § 386-1, and have been addressed by the Supreme Court.

The use of slightly different language in Section 396-\_\_ (a) of the bill is surplusage, and worse, will only serve to confuse the issues. Section 396-\_\_ (a) should be stricken from the bill.



III. Section 396- (b)(1) must be stricken or substantially amended.

Section 396-\_\_ (b) provides that an employer shall not controvert a “claim for services.” As noted in the previous section, an injured worker is not entitled to only “services”, but to “medical care, services and supplies”, and therefore the bill should be amended to refer to “medical care, services and supplies.”

Section 396-\_\_ (b) does not state who provided the “services”. The bill should refer to a “claim of a provider of medical care, services or supplies.”

Section 396-\_\_ (b)(1) provides an employer shall not controvert a claim “without reasonable ground.” This provision is unnecessarily broad, and could open the door for an employer to simply argue that it is doing an investigation. This subsection should be stricken.

Alternatively the subsection should state that an employer shall not controvert a claim “without specific facts and law to support the controversion.”

IV. Section 396- (b)(2) must be stricken

Section 396-\_\_ (b)(2) is confusing and must be stricken. While Section 396-\_\_ (b)(2) referred to claims for providers, this subsection refers to an employee’s “claim”, and presumably therefore refers to a claim that he suffered a work injury. Section 396-\_\_ (b)(2) creates a special presumption for a separate class of employees, presumably those who do not have personal medical coverage.

However, §386-85 already provides that a claim is presumed to be compensable, and already covers employees who do not have personal medical coverage.

If the “claim” in Section 396-\_\_ (b)(2) refers to a bill from a medical provider, the reason for a special class of employees is not apparent since all workers’ compensation medical care, services and supplies should be paid regardless of whether an employee has private medical coverage.

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

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V. Section 396- (c), (d), (e) and (f) are duplicative of regulations.

Section 396-\_\_ (c) provides that an employer must give notice to the provider of services that a bill is being denied.

As noted above, the reference to “services” should be expanded to refer to medical “care, services and supplies”.

There is already a provision for notice by employers to “providers of service” in HAR §12-15-94, along with provisions for bill dispute resolution. The provisions in both the regulation and bill are cumbersome and place too much of a burden on medical providers.

VI. Section 386- (g) must be deleted.

Section 386-\_\_ (g) provides that an employee is liable for reimbursement of a claim found to be uncompensable. This provision must be deleted as being unduly punitive. Employees who make claims have probably suffered wage loss. Because of the wage loss, they frequently have fallen behind on financial obligations and may have also lost their homes. Any monetary benefits received have already been used to pay bills.

An employee making a claim might have very limited English skills and very limited education. To impose a penalty upon such employees would be unconscionable.

Not everything in workers’ compensation law is clear. Some claims may be of doubtful compensability because of the law, but also because medicine is not strictly a science. A reimbursement provision would also deter such claims from being reasonably pursued.

A deterrence already exists in the law against fraud in HRS § 386-98, and against claims brought without reasonable ground in HRS § 386-98(a). Therefore, Section 386-\_\_ (g) must be deleted.

VII. CONCLUSION.

Before attempting to fix something, the specific problem must be identified. In medicine, for example, a doctor should obtain an accurate diagnosis in order to cure the patient. Before the Legislature attempts to amend the workers' compensation statute, the specific problem must first be accurately identified. The amendment should be narrowly written to address the cure. Broad language will have unintended consequences.

If the problem sought to be address is getting physicians paid, then the bill should be limited to that issue.

Please amend S.B. 857, S.D.1, HD1, and move the measure towards passage.

Thank you for considering my testimony.

WAYNE H. MUKAIDA