

DEPARTMENT OF HUMAN RESOURCES
CITY AND COUNTY OF HONOLULU

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LATE TESTIMONY

KIRK CALDWELL
MAYOR



CAROLEE C. KUBO
DIRECTOR

NOEL T. ONO
ASSISTANT DIRECTOR

February 7, 2017

The Honorable Gilbert S.C. Keith-Agaran, Chair
The Honorable 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. 857
Relating to Workers' Compensation**

S.B. 857 proposes to restrict an employer's ability to deny workers' compensation claims pending investigation. The City and County of Honolulu respectfully 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.

The allegation that employees whose claims have been denied pending investigation are unable to use their private medical insurance until a decision has been rendered is also inaccurate. To the contrary, 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:

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 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 an individual's private medical insurance would provide the necessary medical care to an employee whose workers' compensation claim was denied pending investigation.

As it stands, a number of the current changes to HRS Chapter 386 proposed by S.B. 857 are problematic. For example, subsection (b) provides that the employer may not controvert a claim for services while the claim is pending investigation. However, the measure fails to provide any mechanism whereby the workers' compensation insurer will be repaid if the claim is determined to be non-compensable. Contrast the foregoing with HAR 12-12-45 which unequivocally provides for reimbursement to the health care contractor if liability is established. The lack of a reciprocal provision in S.B. 857 would result in a windfall for the employee and/or the private health insurance company and could potentially lead to an increased number of questionable workers' compensation claims being filed.

Similarly, the last sentence in subsection (f) appears to be 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 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.

Based on the foregoing, the City requests that the S.B. 857 be amended to add HAR Section 12-12-45 as a statute in HRS Chapter 386 as opposed to the modified version of HAR 12-15-94 that is currently in the bill. In the alternative, we would ask that the measure be held.

Thank you for the opportunity to testify.

Sincerely,



Carolee C. Kubo
Director



**Testimony to the Senate Committee on Judiciary and Labor
Tuesday, February 7, 2017 at 9:00 A.M.
Conference Room 016, State Capitol**

RE: SENATE BILL 857 RELATING TO WORKERS' COMPENSATION

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

The Chamber of Commerce Hawaii ("The Chamber") **opposes** SB 857, which requires the director of labor and industrial relations to set workers' compensation medical charges that correspond to the United States Department of Labor Office of Workers' Compensation Programs fee schedule instead of the Medicare Resource Based Relative Value Scale applicable to Hawaii. Also requires the department of labor and industrial relations to submit a report to the legislature and makes an appropriation for analysis of the Act's impact on injured worker's access to treatment.

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.

COMMITTEE ON JUDICIARY AND LABOR

Senator Gilbert S.C. Keith-Agaran, Chair

Senator Karl Rhoads, Vice Chair

As President of Work Injury Medical Association of Hawaii representing the providers treating injured workers in our state, we strongly support SB 857. This much needed and long overdue advocacy and legislation recognizing the abusive practices by certain insurance carriers must become law. It is common in our state for DLIR to “rubber stamp” all requests for extension of time without consideration if any due process is actually needed.

SB857 and HB979 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. They each codify into statute Hawaii Administrative Rules 12-15-94 (Payment by Employer) and amend and clarify it as follows:

(a) Requires that the employer shall not controvert a claim for services:

- (1) Without reasonable cause; or
- (2) While the claim is pending investigation.

(b) Requires that the employer shall notify the provider within thirty calendar days, instead of sixty, should the employer controvert the claim for services.

(c) Increases the maximum service fee from \$500 to \$1,000 for which the director may assess against a party who fails to negotiate in good faith.

(d) Provides that denial of payment without reasonable cause shall be considered a failure to negotiate in good faith.

Please consider the specific justification:

- Hawaii's existing workers' compensation 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.
- Thus, injured workers sometimes wait months for treatment or rehab.

- For many workers with severe injuries, the State's workers' compensation system is the only thing that stands between them and a downward spiral of unemployment, debt and even homelessness.
- Although there is no statute, administrative rule or judicial ruling permitting this practice of "denying pending investigation," insurers continue to abuse this practice.
- Although current law allows the DLIR Director to fine parties up to \$500 for failing to negotiate in good faith, those fines are not regularly enforced. The Director has said that DLIR will begin assessing fines, and an increase of the maximum fine amount to \$1,000 would provide added incentive for parties to negotiate in good faith.
- 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.

We must give the workers in the State of Hawaii protection from the predatory and medieval practices of delaying payment and care as long as possible, forcing worker to return to work with serious injuries, find less suitable employment or be forced to apply for public assistance.

Sincerely,

Scott J Miscovich MD

President WIMAH

Work Injury Medical Association of Hawaii



LATE TESTIMONY

Testimony to the Senate Committee on
Judiciary and Labor
February 7, 2017 at 9:00 a.m.
State Capitol - Conference Room 16

RE: SB 857 Relating to Workers' Compensation

Aloha members of the Committee:

We are Cara Heilmann and John Knorek, the Legislative Committee co-chairs for the Society for Human Resource Management – Hawaii Chapter (“SHRM Hawaii”). SHRM Hawaii represents more than 800 human resource professionals in the State of Hawaii.

We are writing to respectfully **oppose** SB 857, 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. It establishes that employers shall notify providers of service of any billing disagreements and allows providers to charge an additional rate to employers who fail to adhere to the notification requirements. It also establishes resolution procedures for employers and providers who have a reasonable disagreement over liability for services provided an injured worker. We believe that this bill unfairly tips the equitable balance of employer and employee perspectives and will likely tend to increase costs.

Human resource professionals are keenly attuned to the needs of employers and employees. We are the frontline professionals responsible for businesses' most valuable asset: human capital. We will continue to review this bill and, if it advances, request to be a part of the dialogue concerning it.

Thank you for the opportunity to testify.



SHRM Hawaii, P. O. Box 3175, Honolulu, Hawaii (808) 447-1840

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. 857
RELATING TO WORKERS' COMPENSATION**

The ILWU Local 142 **strongly supports** S.B. 857, 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.

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 was 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 worker's 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 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 or income?

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

From: mailinglist@capitol.hawaii.gov
 To: [JDL Testimony](#)
 Cc:
 Subject: Submitted testimony for SB857 on Feb 7, 2017 09:00AM
 Date: Tuesday, February 7, 2017 9:26:07 AM

SB857

Submitted on: 2/7/2017

Testimony for JDL on Feb 7, 2017 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
cathy wilson	Work Injury Medical Association of Hawaii	Support	No

Comments: WIMAH supports SB857. SB 857 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 follows: (a) Requires that the employer shall not controvert a claim for services: (1) Without reasonable cause; or (2) While the claim is pending investigation. (b) Requires that the employer shall notify the provider within thirty calendar days, instead of sixty, should the employer controvert the claim for services. (c) Increases the maximum service fee from \$500 to \$1,000 for which the director may assess against a party who fails to negotiate in good faith. (d) Provides that denial of payment without reasonable cause shall be considered a failure to negotiate in good faith. As Section 1 of SB857 states, Hawaii's existing workers' compensation 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. Although there is no statute, administrative rule or judicial ruling permitting this practice of "denying pending investigation," insurers continue to abuse this practice. 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.

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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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 857 Relating to Workers' Compensation**

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 opposed to this measure. However, we would be in support of this measure if it increased the amount of time for the parties to perform and respond appropriately to each other and work through any disputes without the Department's intervention until later in the process – if even required.

While SB 857 appears reasonable on the surface, we are concerned that collapsing existing time-frames will create more friction between the parties and disrupt the current process.

- Processing payments within 30 days puts undue strain on the employer. This will cause unnecessary overpayments or denials due to shortened amount of time for vetting the claim or the charge. It is important to leave it at 60 days.
- If one excludes the hundreds of Bill Disputes for physician-dispensed drugs, there are only a handful of Bill Disputes on an annual basis. If physician dispensing is adequately addressed, then DCD will have very, very few Bill Disputes.
- Requiring providers to submit bill disputes within 30 days will create an avalanche of Bill Dispute requests for DCD because providers will feel they don't have enough time to resolve the issue with the employer and resort to routinely filing bill disputes. This would be particularly aggravated if the OWCP is adopted as the new WC fee schedule. This is because OWCP does not publish coding, reimbursement, and documentation guidelines the way Medicare does. OWCP

will not have a dedicated line for questions from Hawaii regarding these issues, which will then have to be addressed by DCD.

- Giving the provider **90 days** to submit the Bill Dispute request allows negotiation/resolution to take place without the need for involving DCD in a Bill Dispute.
- If more accountability is going to be expected of the payor by adding this language "Denial of payment without reasonable cause shall be considered a failure to negotiate in good faith", then more accountability should also be expected of the provider of service by adding this language: Charges for medical services, drugs and/or supplies without a reasonable cause shall be considered a failure to negotiate in good faith. The reason for this is that a handful of non-compliant providers bill for unrelated or unbundled or over-priced services to see what gets paid. Presently, there are no negative consequences to providers to who abuse the WC system (Medicare and Group Health handle these abuses under HIPPA law. WC is exempt from HIPPA).

In summary, SB857 will accelerate billing, collection, and dispute resolution processes to the point where the collapsed time-frames will work against the parties and increase the amount of disputes between providers and payors.

Thank you for the opportunity to testify on this measure.

Mahalo,

Maria Valladares, RN, BSN, CPC, CPMA
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Website: www.gcahawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

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LATE TESTIMONY

February 7, 2017

TO: HONORABLE GIL KEITH AGARAN, CHAIR, HONORABLE KARL RHOADS, VICE CHAIR AND MEMBERS OF THE COMMITTEE ON JUDICIARY AND LABOR

SUBJECT: **OPPOSITION TO S.B. 857, 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. Establishes that employers shall notify providers of service of any billing disagreements and allows providers to charge an additional rate to employers who fail to adhere to the notification requirements. Establishes resolution procedures for employers and providers who have a reasonable disagreement over liability for services provided an injured worker.

HEARING

DATE: February 7, 2017
TIME: 9:00 a.m.
PLACE: Conference Room 016

Dear Chair Keith Agaran ,Vice Chair Rhoads 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, 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.

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.

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