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March 29, 2018

To: The Honorable Brian T. Taniguchi, Chair,
The Honorable Karl Rhoads, Vice Chair, and
Members of the Senate Committee on Judiciary

Date: Thursday, March 29, 2018

Time: 9:30 a.m.

Place: Conference Room 016, State Capitol

From: Leonard Hoshijo, Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. NO. 2375 HD1 SD1 RELATING TO TEMPORARY DISABILITY INSURANCE

I. OVERVIEW OF PROPOSED LEGISLATION

This proposal seeks to amend chapter 392, Hawaii Revised Statutes (HRS), the Temporary Disability Insurance (TDI) law, by allowing greater flexibility as to who can certify a disability, where an appeal may be filed, where a hearing may be held, in the methods used to send notices of hearing, and in the conduct of hearings. The proposal also seeks to increase the penalty when an employer fails to provide timely information on a claim.

DLIR strongly supports this Departmental measure.

II. CURRENT LAW

Chapter 392, HRS, requires that a physician certify the disability. However, this does not align with the intent of the Legislature to allow an Advanced Practice Registered Nurse (APRN) to serve as a care provider pursuant to Act 183, Session Laws of Hawaii 2016.

The current penalty for employers who do not provide wage and employment information within seven days from an insurance carrier's request is \$10 per delinquent request as inserted in the law in 1973.

TDI appeals must be filed at the office of the Department in the county where the

employee resides or in the county where the employee was employed prior to the disability. The appeal must be heard in the county where the appeal was filed.

The hearing process currently follows the procedures required under chapter 91, HRS, regarding how hearing notices are delivered. Chapter 91, HRS, requires notices to be sent to all parties by registered or certified mail with return receipt requested and requires the department to publish the notice of hearing in a newspaper of general circulation when the notice of hearing is refused or is undeliverable.

III. COMMENTS ON THE HOUSE BILL

DLIR strongly supports the proposal for the following reasons:

- Employees will be allowed to have APRNs certify the disability after receiving treatment, giving employees additional provider choices, especially employees residing in rural areas.
- The increased penalty from \$10 to \$250 per request will serve as an incentive to employers to provide prompt information, thus allowing employees to receive prompt benefit payments.
- By removing the requirement to submit an appeal to a specific location, DLIR intends to modernize the process so employees will also be able to submit electronically.
- Similarly, instead of limiting the hearing location to the county office where the employee was employed or resided at the time of the disability, the department will be able to hold a hearing in another county if the need arises. For example, the employee may be permanently or temporarily living in another county for medical treatment or other reasons.
- In the case a party objects to the location of the hearing, then the hearing "shall be heard in the county in which the employee resides or in which the employee was employed prior to the employee's disability."
- DLIR will be able to send notices of hearing electronically or by first class mail, rather than by registered or certified mail with return receipt requested as currently required by chapter 91, HRS. This will expedite the notice process and may be more convenient for the parties.
- When the notice of hearing cannot be delivered to a party, the notice will be given by online posting on the department's webpage. The online posting provision in the measure mirrors a similar provision in section 371-4, HRS, which allows the Labor and Industrial Relations Appeals Board to post notices electronically if service by first class mail is not made. For the hearings held under chapter 392 in 2017, and in the years prior, DLIR staff does not recall a

party attending a hearing when noticed by publishing in a newspaper of general circulation pursuant to chapter 91.

- By allowing hearings to be held not only in person but also via telephone or by other communication devices, the department can accommodate parties that are not located on the same island and reduce travel time and costs for the parties.
- The proposal clarifies that a decision can be issued based on available information if any party to the hearing fails to appear at the hearing, which will help reduce the backlog of untimely appeals in which one of the parties usually fails to appear and benefits are not awarded.

THE SENATE
THE TWENTY-NINTH LEGISLATURE
REGULAR SESSION OF 2018

COMMITTEE ON JUDICIARY

Sen. Brian Taniguchi, Chair
Sen. Karl Rhoads, Vice Chair
State Capitol, Conference Room 016
Thursday, March 29, 2018, 9:30 a.m.

**STATEMENT OF ILWU LOCAL 142 RE: HB 2375, H.D. 1, SD1
RELATING TO TEMPORARY DISABILITY INSURANCE**

Thank you for the opportunity to present testimony regarding H.B. 2375, H.D. 1, SD 1. ILWU Local 142 supports this bill, although we also propose specific modifications to enhance its effectiveness.

H.B. 2375, H.D. 1, SD 1 amends Section 392-26 HRS to permit advanced practice registered nurses to certify disability for temporary disability insurance purposes. This is a reasonable amendment as APRN nurses already perform many of functions of physicians. However, we suggest that psychologists should also be permitted to certify TDI disability, as their unique training fully qualifies them to fulfill this function, and it is a long standing anomaly that they are not granted this authority.

H.B. 2375, H.D. 1, SD 1 also adds increased penalties for the failure of Employers to follow the procedures outlined by law. This increase is appropriate and reasonable.

We question, however, creating the option of giving notice to Claimants via merely posting notice on the Department of Labor and Industrial Relations website by amendment of Section 392-92(a) HRS, can be done effectively without other modifications to the department's regulations. It is clear that posting on the department's website is a last resort when over methods of normal service of notice fail. However, mere electronic posting may be of little aid to those too poor to own computers, those who are illiterate, or those who cannot read English well enough to understanding the posting.

Given limited government resources, we understand the impetus to hold hearings in counties where the claimant resides or was employed or by telephone and these changes are also useful and would enhance efficiency. However, we suggest that the Department also require by regulation that the Claimant keep the Department informed as to the Claimant's current address and phone and internet contact information. We could find no such requirement in the current administrative rules implementing Chapter 392 HRS or HAR 12-11-41 where one would normally expect a requirement of that nature to be located. Perhaps such a statement could also be inserted on the department's standard TDI Form 45. While this would not solve all difficulties for applicants for benefits who are illiterate or non-English

speaking, it would increase the likelihood that when the application is filed that an employer or representative of the claimant would remind the claimant of the need to provide current contact information.

ILWU Local 142 supports the enactment of HB 2375, H.D. 1, SD 1 and hopes the changes proposed in this testimony can also be adopted by the Committee to promote the objectives of this legislation.

Written Testimony Presented Before the
Senate Committee on Judiciary
March 29, 2018 9:30 a.m.

by

Laura Reichhardt, MS, APRN, NP-C, Director
Hawai'i State Center for Nursing
University of Hawai'i at Mānoa

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**IN STRONG SUPPORT
HB2375, HD1, SD1 RELATING TO TEMPORARY DISABILITY INSURANCE**

Chair Taniguchi, Vice Chair Rhoads, and members of the Senate Committee on Judiciary, thank you for this opportunity to provide testimony in strong support of HB 2375, HD1, SD1's intent to include advanced practice registered nurses (APRNs) in the list of providers who may certify the temporary disability of a claimant. This testimony is in regard to only the content found in the following section:
§392-26 Care by physician, advanced practice registered nurse, or equivalent required.

Thanks to the wisdom and stewardship of the Legislature, removal of state regulatory barriers to APRN scope of practice, which now allows full practice authority, has led to a rapid increase in the number of APRNs licensed in the state. According to the research and analysis conducted by the Hawai'i State Center for Nursing (HSCN), APRNs in Hawai'i have grown 104% since 2005. Today, there are 1,092 active in-state APRNs in Hawai'i. Overall, 53% of the APRN workforce is practicing in a primary care specialty. APRNs work in all regions of the state and are likely to work in HRSA-defined primary care shortage areas: 100% of Hawai'i County and Kaua'i County and 75% of Maui County APRNs responding to the HSCN Nursing Supply Survey work in a HPSA area, and 100% of nurses in these three counties, as well as nearly 5% in Honolulu City and County work in a HRSA-Defined Medically Underserved Area/Population. Over 25% of APRNs work in OMB-defined Rural Counties.

APRNs are responding to the call for health care service in primary care and in rural, underserved, and neighbor island communities across the state. By enabling them to certify for temporary disability insurance, people in Hawai'i will be able to receive timely, high quality care by the provider that is already providing their care.

Therefore, the HSCN respectfully supports the language pertaining to APRNs and requests the favorable consideration of this language in HB2375, HD1, SD1. We appreciate your continuing support of nursing and accessible, quality health care in Hawai'i. Thank you for the opportunity to testify.