

**SB 2244**

**SD-1**

**RELATING TO  
WORKERS'  
COMPENSATION**

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# A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that drug overdose deaths  
2 and opioid-involved deaths continue to increase in the United  
3 States. According to information from the federal Centers for  
4 Disease Control and Prevention, the majority of drug overdose  
5 deaths involve an opioid. The number of overdose deaths  
6 involving opioids has quadrupled since 1999, with more than half  
7 a million people dying from drug overdoses between 2000 and  
8 2015. The Centers for Disease Control and Prevention notes that  
9 overdoses from prescription opioids are a driving factor in the  
10 fifteen-year increase in opioid overdose deaths. Furthermore,  
11 although the amount of prescription opioids sold to pharmacies,  
12 hospitals, and doctors' offices nearly quadrupled from 1999 to  
13 2010, there has not been an overall change in the amount of pain  
14 reported by Americans. The Centers for Disease Control and  
15 Prevention also estimates that the total economic burden of  
16 prescription opioid misuse in the United States is  
17 \$78,500,000,000 a year, including the costs of health care, lost



1 productivity, addiction treatment, and criminal justice  
2 involvement.

3       The legislature further finds that numerous efforts have  
4 been made at the national and state levels to respond to the  
5 nation's opioid epidemic. A number of states have also taken  
6 steps through their workers' compensation systems to stem the  
7 overprescribing of opioids to workers injured on the job.

8       The use of prescription opioids may be a reasonable and  
9 appropriate treatment option for some workplace injuries.

10 However, the legislature notes that according to the National  
11 Safety Council, research on medical outcomes when opioids are  
12 used in workers' compensation has demonstrated that opioid use  
13 beyond the acute phase can impair function, be a barrier to  
14 recovery, and increase an injured worker's experience of pain.

15       The legislature therefore finds that it is important to  
16 address the opioid epidemic in the workers' compensation system  
17 in a manner similar to the way opioid use has been addressed in  
18 other areas of state law.

19       Accordingly, the purpose of this Act is to:

20       (1) Require health care providers in the workers'  
21            compensation system who are authorized to prescribe



1           opioids to adopt and maintain policies for informed  
2           consent to opioid therapy in circumstances that carry  
3           elevated risk of dependency; and

4           (2) Establish limits for concurrent opioid and  
5           benzodiazepine prescriptions in the workers'  
6           compensation system.

7           SECTION 2. Chapter 386, Hawaii Revised Statutes, is  
8           amended by adding two new sections to be appropriately  
9           designated and to read as follows:

10           "§386-A Opioid therapy; qualifying injured employees;  
11           informed consent process. (a) Beginning on July 1, 2019, any  
12           health care provider authorized to prescribe opioids shall adopt  
13           and maintain a written policy or policies that include execution  
14           of a written agreement to engage in an informed consent process  
15           between the health care provider authorized to prescribe opioids  
16           and a qualifying injured employee.

17           (b) The department shall make available on its website a  
18           copy of the template developed by the department of health  
19           pursuant to section 329-38.5(b). The template shall be posted  
20           to the department's website no later than December 31, 2018.



1        (c) For the purposes of this section, "qualifying injured  
2 employee" means:

3        (1) An injured employee requiring opioid treatment for  
4 more than three months;

5        (2) An injured employee who is prescribed benzodiazepines  
6 and opioids together; or

7        (3) An injured employee who is prescribed a dose of  
8 opioids that exceeds ninety morphine equivalent doses.

9        (d) A violation of this section shall not be subject to  
10 the penalty provisions of part IV of chapter 329.

11        §386-B Qualifying injured employees; initial concurrent  
12 prescriptions; opioids and benzodiazepines. (a) Initial  
13 concurrent prescriptions for opioids and benzodiazepines shall  
14 not be for longer than seven consecutive days unless a supply of  
15 longer than seven days is determined to be reasonably needed for  
16 the treatment of:

17        (1) Pain experienced while the qualifying injured employee  
18 is in post-operative care;

19        (2) Chronic pain and pain management;

20        (3) Substance abuse or opioid or opiate dependence;

21        (4) Cancer;



1       (5) Pain experienced while the qualifying injured employee  
2           is in palliative care; or

3       (6) Pain experienced while the qualifying injured employee  
4           is in hospice care;

5 provided that if a health care provider authorized to prescribe  
6 opioids issues a concurrent prescription for more than a seven-  
7 day supply of an opioid and benzodiazepine, the health care  
8 provider shall document in the qualifying injured employee's  
9 medical record the condition for which the health care provider  
10 issued the prescription and that an alternative to the opioid  
11 and benzodiazepine was not appropriate treatment for the  
12 condition.

13       (b) After an initial concurrent prescription for opioids  
14 and benzodiazepines has been made, a health care provider  
15 authorized to prescribe opioids may authorize subsequent  
16 prescriptions through a telephone consultation with the  
17 qualifying injured employee when the health care provider deems  
18 such action to be reasonably needed for post-operative care and  
19 pain management; provided that the health care provider shall  
20 consult with a qualifying injured employee in person at least  
21 once every ninety days for the duration during which the health



1 care provider concurrently prescribes opioids and  
2 benzodiazepines to the qualifying injured employee.

3 (c) For the purposes of this section, "qualifying injured  
4 employee" has the same meaning as in section 386-A."

5 SECTION 3. Section 386-21.7, Hawaii Revised Statutes, is  
6 amended by amending subsection (a) to read as follows:

7 "(a) Notwithstanding any other provision to the contrary,  
8 immediately after a work injury is sustained by an employee and  
9 so long as reasonably needed, the employer shall furnish to the  
10 employee all prescription drugs as the nature of the injury  
11 requires[-]; provided that initial concurrent prescriptions for  
12 opioids and benzodiazepines shall meet the requirements of  
13 section 386-B. The liability for the prescription drugs shall  
14 be subject to the deductible under section 386-100."

15 SECTION 4. In codifying the new sections added by  
16 section 2 of this Act, the revisor of statutes shall substitute  
17 appropriate section numbers for the letters used in designating  
18 the new sections in this Act.

19 SECTION 5. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.

21



1 SECTION 6. This Act shall take effect on January 1, 2045.





**Report Title:**

Workers' Compensation; Opioid Therapy; Informed Consent;  
Prescription Limits

**Description:**

Requires health care providers in the workers' compensation system who are authorized to prescribe opioids to adopt and maintain policies for informed consent to opioid therapy in circumstances that carry elevated risk of dependency. Establishes limits for concurrent opioid and benzodiazepine prescriptions. Takes effect 1/1/2045. (SD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*



**SB 2244**

**SD-1**

**TESTIMONY**

DAVID Y. IGE  
GOVERNOR

DOUGLAS S. CHIN  
LIEUTENANT GOVERNOR



LEONARD HOSHIJO  
DIRECTOR

**STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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March 22, 2018

To: The Honorable Aaron Ling Johanson, Chair,  
The Honorable Daniel Holt, Vice Chair, and  
Members of the House Committee on Labor and Public Employment

The Honorable John M. Mizuno, Chair,  
The Honorable Bertrand Kobayashi, Vice Chair and  
Members of the House Committee on Health and Human Services

Date: Thursday, March 22, 2018  
Time: 8:30 a.m.  
Place: Conference Room 309, State Capitol

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

**Re: S.B. No. 2244 SD1 RELATING TO WORKERS' COMPENSATION**

**I. OVERVIEW OF PROPOSED LEGISLATION**

SB2244SD1 proposes two new sections for Chapter 386, Hawaii Revised Statutes (HRS) The first under section **386-A** titled "**Opioid therapy; qualifying injured employees; informed consent process**", which will require an opioid therapy consent process agreement between the injured employee and the physician who prescribes the opioid(s). The written agreement will at the minimum consists of specific requirements on the part of both the injured employee and the physician.

The second proposed section **386-B**, titled "**Qualifying injured employees; initial concurrent prescriptions; opioids and benzodiazepines**" will limit the initial prescription to no more than a seven-day supply.

Section 3 of this proposal also amends Section 386-21.7, HRS, by amending subsection (a) to ensure that the initial concurrent prescriptions of opioids and benzodiazepines meet the requirement of the proposed section 386-B.

The Department supports the intent of the measure and suggests amendments are needed to address potential unintended consequences.

## **II. CURRENT LAW**

Currently, nothing in Chapter 386, HRS, mandates a consent process agreement be made between the injured employee and the prescribing physician of opioid drugs. Section 386-21.7, HRS, specifies how prescription and compound drugs are reimbursed. The law does not specify limits on supply for compound drugs and does not preclude the physician from dispensing any drug including schedule II drugs beyond thirty days.

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

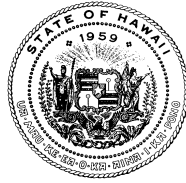
DLIR supports the intent of the measure; however, it suggests amendments are needed for the measure to address potential, unintended consequences.

Section 1 of this proposal mandates a consent process agreement between the injured employee and the prescribing physician. If the parties do not enter into an agreement prior to the prescribing of opioid drugs, will the employer have the right to deny the injured employee the prescribed opioid drugs? If the employer did deny, the injured worker would need to request a hearing, essentially defeating the purpose of the prescription as the injured worker would not have the medication to treat the pain through workers' compensation.

Another unintended consequence could involve creating another basis for the parties to enter into a bill dispute process. The number of bill disputes has dropped from approximately 2,200 in 2013 to under 200 currently. This has allowed the hearings branch to focus on other matters and has helped to significantly reduced the backlog of hearings, which benefits all parties in the workers' compensation program.

DLIR supports the concept of a consent agreement process to help ensure that schedule II drugs, which have a high potential for abuse, are prescribed based upon medical necessity and are justifiably reasonable and necessary. According to the Centers for Disease Control and Prevention, "Opioids (including prescription opioids and heroin) killed more than 33,000 people in 2015, more than any year on record. Nearly half of all opioid overdose deaths involve a prescription opioid." The opioid epidemic in the United States has a far-reaching impact on the workers compensation system. Many injured workers are prescribed opioid drugs to help with pain following a serious injury. For Service Year 2016, Hawaii spent \$8 million on 57,000 prescriptions for workers compensation claims.

If an injured worker becomes addicted to his or her "pain meds," it greatly affects their ability to get back to work, may increase their disability which will lead to higher medical costs, and sadly can have a disabling effect on the injured worker's family relationships and finances. This proposal limits the initial concurrent prescriptions of opioids and benzodiazepines to a seven (7) day supply. We support this as it will still provide the injured employee with the needed immediate relief.



STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P. O. Box 3378  
Honolulu, HI 96801-3378  
doh.testimony@doh.hawaii.gov

**Testimony COMMENTING on SB 2244 SD1  
RELATING TO WORKERS' COMPENSATION**

REPRESENTATIVE AARON LING JOHANSON, CHAIR  
HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

REPRESENTATIVE JOHN M. MIZUNO, CHAIR  
HOUSE COMMITTEE ON HEALTH & HUMAN SERVICES

Hearing Date: March 22, 2018

Room Number: 309

1 **Fiscal Implications:** Undetermined

2 **Department Testimony:** The Department of Health (DOH) supports the intent of this bill to  
3 require providers to adopt an informed consent for injured employees requiring opioid therapy,  
4 as well as the regulation of initial concurrent prescriptions for opioids and benzodiazepines. This  
5 measure aligns with the following objectives in the Hawaii Opioid Action Plan (Plan), developed  
6 by the Governor's Opioid and Substance Misuse Initiative (Collaborative):

- 7
- 8 • Objective 2-3: By March 2018, engage payers and physician organizations to  
9 disseminate basic best practice information on opioid-prescribing statewide;
  - 10 • Objective 2-3a: By December 2019, develop a standardized training on opioid-  
11 prescribing best practices and provide training to 50 percent of prescribers statewide; and
  - 12 • Objective 2-4: By July 2018, implement informed consent template as outlined in Act 66  
13 (2017).

14 The Collaborative brought together a wide range of legislators, state and county officials,  
15 law enforcement and first responders, health care professionals and other citizens to work  
16 together to develop and implement a Plan to reduce prescription opioid abuse and deaths from  
17 overdose. The full Plan is available at: [https://health.hawaii.gov/substance-  
abuse/files/2013/05/The-Hawaii-Opioid-Initiative.pdf](https://health.hawaii.gov/substance-abuse/files/2013/05/The-Hawaii-Opioid-Initiative.pdf).

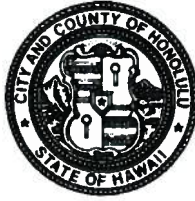
1           The DOH is also grateful to the sponsors of SB 2244 SD 1 for their recommendation to  
2 expand the use of the opioid informed consent template developed by the Collaborative. The  
3 template is now posted on the DOH website: [https://health.hawaii.gov/substance-](https://health.hawaii.gov/substance-abuse/files/2017/12/opioid_informed_consent_template.pdf)  
4 [abuse/files/2017/12/opioid\\_informed\\_consent\\_template.pdf](https://health.hawaii.gov/substance-abuse/files/2017/12/opioid_informed_consent_template.pdf).

5           The DOH defers to the Department of Labor & Industrial Relations on the regulation and  
6 implementation of the Hawaii State Compensation Mutual Insurance Fund.

7           Thank you for the opportunity to provide testimony.

DEPARTMENT OF HUMAN RESOURCES  
**CITY AND COUNTY OF HONOLULU**  
650 SOUTH KING STREET, 10<sup>TH</sup> FLOOR • HONOLULU, HAWAII 96813  
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KIRK CALDWELL  
MAYOR



CAROLEE C. KUBO  
DIRECTOR

NOEL T. ONO  
ASSISTANT DIRECTOR

March 22, 2018

The Honorable Aaron Ling Johanson, Chair  
The Honorable Daniel Holt, Vice Chair  
and Members of the Committee  
on Labor & Public Employment

The Honorable John M. Mizuno, Chair  
The Honorable Bertrand Kobayashi, Vice Chair  
and Members of the Committee  
on Health & Human Services

The House of Representatives  
State Capitol, Room 309  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chairs Johanson and Mizuno, Vice Chairs Holt and Kobayashi, and Members of the Committees:

**SUBJECT: Senate Bill No. 2244, S.D. 1  
Relating to Workers' Compensation**

S.B. 2244, S.D. 1, requires health care providers in the workers' compensation system who are authorized to prescribe opioids to adopt and maintain policies for informed consent to opioid therapy in circumstances that carry elevated risk of dependency and establishes limits for concurrent opioid and benzodiazepine prescriptions.

The City and County of Honolulu, Department of Human Resources, fully supports this measure, which we believe will help to lessen the potential for abuse and possible addiction, and is consistent with providing reasonably needed medical care, services, and supplies to injured workers.

Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to read "Carolee C. Kubo".

Carolee C. Kubo  
Director

## **SB2244 SD1 Workers Comp. Opioid Informed Consent, Prescriptive Limits**

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT:

- Representative Aaron Ling Johanson, Chair; Representative Daniel Holt, Vice Chair

COMMITTEE ON HEALTH AND HUMAN SERVICES:

- Representative John Mizuno, Chair; Representative Bertrand Kobayashi, Vice Chair
- Thursday, March 22, 2018: 8:30 am
- Conference Room 309

### **Hawaii Substance Abuse Coalition (HSAC) Comments on SB2244 SD1:**

*GOOD MORNING CHAIRS, VICE CHAIRS AND DISTINGUISHED COMMITTEE MEMBERS. My name is Alan Johnson. I am the current chair of the Hawaii Substance Abuse Coalition (HSAC), a statewide organization of almost 40 alcohol and drug treatment and prevention agencies.*

The Hawaii Opioid Action Plan (HOAP), the collaborative gathering of about 150 political, government, insurers and providers, including HSAC members, developed plans that included our construction of a formal opioid consent form.

- We recommend limits for overall excessive use but let's be careful to allow doctors room for medical necessity, especially for serious conditions.
- We defer to HMA and WIMAH (medical healthcare practitioners) for input in this area.
- Also, we defer to regulatory bodies for what may have to change to facilitate good implementation of this proposed legislation.

We (HOAP) came together with so many, accomplishing so much in a short time because we are cognizant of the impending crisis due to Hawaii's opioid misuse and high overdose.

We appreciate the opportunity to provide testimony and are available for questions.



**SB-2244-SD-1**

Submitted on: 3/21/2018 4:57:09 AM

Testimony for LAB on 3/22/2018 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Oahu County Committee on Legislative Priorities of the Democratic Party of Hawai'i	Support	No

Comments:

To the Honorable Aaron Ling Johanson, Chair; the Honorable Daniel Holt, Vice-Chair, and Members of the Committee on Labor & Public Employment:

To the Honorable John M. Mizuno, Chair; the Honorable Bertrand Kobayashi, Vice-Chair, and Members of the Committee on Health & Human Services:

Good morning. My name is Melodie Aduja. I serve as Chair of the Oahu County Committee ("OCC") Legislative Priorities Committee of the Democratic Party of Hawaii. Thank you for the opportunity to provide written testimony on **SB2244 SD1** relating to Workers' Compensation; Opioid Therapy; Informed Consent; and Prescription Limits.

The OCC Legislative Priorities Committee is in favor of **SB2244 SD1** and supports its passage.

**SB2244 SD1** is in accord with the Platform of the Democratic Party of Hawai'i ("DPH"), 2016, as it requires health care providers in the workers' compensation system who are authorized to prescribe opioids to adopt and maintain policies for informed consent to opioid therapy in circumstances that carry elevated risk of dependency; and establishes limits for concurrent opioid and benzodiazepine prescriptions, effective 1/1/2045.

The DPH Platform states that "[a]ccess to health care is a basic human need. Our citizens and visitors have an inherent right to high quality, high standard health care. The state legislature and the federal government should take all appropriate steps to create and support a health care system of public, for-profit, and nonprofit hospitals and other medical facilities that follow best practices to enhance and protect and preserve life. (Platform of the DPH, P.7, Lines 361-364 (2016)).

We also support the establishment of adequate mental health and statewide drug rehabilitation programs set up in conjunction with policing policies aimed at enabling all that seek assistance to obtain whatever support assistance is needed to allow them to remain free of drug dependence. (Platform of the DPH, P.7, Lines 382-384 (2016)).

Given that **SB2244 SD1** requires health care providers in the workers' compensation system who are authorized to prescribe opioids to adopt and maintain policies for informed consent to opioid therapy in circumstances that carry elevated risk of dependency; and establishes limits for concurrent opioid and benzodiazepine prescriptions, effective 1/1/2045, it is the position of the OCC Legislative Priorities Committee to support this measure.

Thank you very much for your kind consideration.

Sincerely yours,

/s/ Melodie Aduja

Melodie Aduja, Chair, OCC Legislative Priorities Committee

Email: legislativepriorities@gmail.com, Text/Tel.: (808) 258-8889



**To: Rep. Aaron Ling Johanson, Chair**

**Rep. Daniel Holt, Vice Chair**

**Members of the Committee on Labor & Public Employment**

**Rep. John M. Mizuno, Chair**

**Rep. Bertrand Kobayashi, Vice Chair**

**Members of the Committee on Health & Human Services**

**Date: Thursday, March 22, 2018**

**Time: 8:30 a.m.**

**Place: Conference Room 309**

**State Capitol**

**415 South Beretania Street**

**Comments on SB2244 SD1**

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.

SB2244 SD1 requires health care providers in the workers' compensation system who are authorized to prescribe opioids to adopt and maintain policies for informed consent to opioid therapy in

circumstances that carry elevated risk of dependency. It also establishes limits for concurrent opioid and benzodiazepine prescriptions.

Act 66 of 2017 (originating as SB505) contained identical provisions on informed consent and prescription limits for health care providers generally. We understand that Act 66 applies to health care providers in the workers' compensation system too. Therefore, we question whether SB2244 SD1 is needed or whether it is duplicative and unnecessary. We would recommend that a legal opinion from the Attorney General's office be obtained before passing this bill.

Thank you for your consideration.

Scott J. Miscovich, MD

President and Director

**SB 2244**

**SD-1**

**LATE  
TESTIMONY**