



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

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February 22, 2018

To: The Honorable Donovan M. Dela Cruz, Chair,
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair, and
Members of the Senate Committee on Ways and Means

Date: Thursday, February 22, 2018

Time: 10:10 a.m.

Place: Conference Room 211, State Capitol

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

Re: S.B. No. 2375 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.

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, in regards to 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 SENATE 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 to help prompt employers to provide 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 WAYS & MEANS

Sen. Donovan Dela Cruz, Chair
Sen. Gilbert S.C. Keith-Agaran, Vice Chair
State Capitol, Conference Room 211
Friday, February 23, 2018, 10:30 p.m.

**STATEMENT OF ILWU LOCAL 142 RE: SB 2375, SD 1
REALTING TO TEMPORARY DISABILITY INSURANCE**

Thank you for the opportunity to present testimony regarding S.B. 2375, SD1. ILWU Local 142 generally supports this bill, though certain aspects of it require modification.

S.B. 2375 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.

S.B. 2375, SD 1 also adds increased penalties for the failure of Employers to submit wage information in a timely manner. This increase is appropriate, reasonable, and necessary for the efficient administration of the statute.

We oppose, 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. Such a practice would adversely affect those most in need of the income replacement afforded by TDI benefits—the illiterate, those who cannot read English, those unable to obtain internet access, and those too poor to own computers. Moreover, terminating the TDI benefits of an individual who is already receiving such support without actual notice probably violates that individual's right to constitutional due process. We urge that the drafters of this bill fully analyze the line of U.S. Supreme Court cases commencing with Goldberg v. Kelly, which held that a pre-termination hearing was required before social security disability benefits could be terminated.

Given limited government resources, we understand the impetus to hold hearings in counties other than the one where the claimant resides or was employed. However, we suggest that rather than creating a cumbersome system of alternatives for determining where a hearing can be held, the Department simply require by regulation that the Claimant keep the Department informed as to the Claimant's current address and phone and internet contact

information. Section 392-92(b) HRS could then be amended to permit the department to hold a hearing in the county where the claimant resides or was employed or in any location or means of communication, including by telephone or Skype, that the claimant consents to.

With incorporation of the suggestions proposed above, ILWU Local 142 supports the enactment of SB 2375, SD 1.

SB-2375-SD-1

Submitted on: 2/21/2018 9:51:03 PM

Testimony for WAM on 2/23/2018 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Bradley Kuo	Testifying for Hawaii Association of Professional Nurses (HAPN)	Support	No

Comments:

To: The Honorable Senator Donovan Dela Cruz, Chair of the Senate Committee on Ways and Means

From: Hawaii Association of Professional Nurses (HAPN)

Subject: SB2375 – Relating to Temporary Disability Insurance

Hearing: February 23, 2018, 10:30 a.m. Conference Room 211, State Capitol

Aloha Senator Dela Cruz, Chair; Senator Keith-Agaran, Vice Chair; and Members of the Senate Committee on Ways and Means,

Thank you for the opportunity to submit testimony regarding SB2375. HAPN is in **strong support** for including Advanced Practice Registered Nurses (APRNs) in the care of those residents of Hawaii requiring certification and care of those with a Temporary Disability.

APRNs have been active members in the State's healthcare solution. We have been on the frontlines in clinics, hospitals, government agencies, community mental health, in private practice, and much more. The Hawaii State Legislature has recognized the important impact that APRNs have made in the healthcare matrix and we are happy and excited to be able to continue this work.

APRNs continue to find innovative ways to meet the needs of those in need of healthcare especially in the rural, underserved, and neighbor island communities. By passing this piece of legislation, APRNs will be able to continue to remove barriers of care and APRNs will be able to timely, quality care.

HAPN strongly supports the language in SB2375 with APRN ability to continue to provide high quality care.

Thank you for the opportunity to share the perspective of HAPN with your committee. Thank you for your enduring support of the nursing profession in the Aloha State.

Respectfully,

Bradley Kuo

HAPN President-Elect

HAPN Legislative Committee, Vice Chair

**Written Testimony Presented Before the
Senate Committee on Ways and Means
February 23, 2018 10:30 a.m.**

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

**IN STRONG SUPPORT
SB 2375, SD1 RELATING TO TEMPORARY DISABILITY INSURANCE**

Chair Dela Cruz, Vice Chair Keith-Agaran, and members of the Senate Committee on Ways and Means, thank you for this opportunity to provide testimony in strong support of SB 2375, 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 SB 2375, SD1. We appreciate your continuing support of nursing and accessible, quality health care in Hawai`i. Thank you for the opportunity to testify.

SB-2375-SD-1

Submitted on: 2/22/2018 8:36:46 AM

Testimony for WAM on 2/23/2018 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Carmen Heidi Linhares, PhD, CNM, APRN-Rx	Individual	Support	No

Comments:

SB-2375-SD-1

Submitted on: 2/21/2018 8:41:31 AM

Testimony for WAM on 2/23/2018 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Yvonne Geesey	Individual	Support	No

Comments:

mahalo for updating our statutes so us advanced practice registered nurses no longer have to examine and treat a patient and then go find a physician colleague to sign the TDI paperwork

SB-2375-SD-1

Submitted on: 2/21/2018 1:58:58 PM

Testimony for WAM on 2/23/2018 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

From: [Celeste Baldwin](#)
To: [WAM Testimony](#)
Subject: APRN's and certifying disability
Date: Tuesday, February 20, 2018 4:47:56 PM

Aloha, Esteemed Colleagues,

This letter is in support of the bill being presented on 2/22/18 regarding the right of APRNs to certify disability for citizens of the State of Hawaii.

In order for our citizens to have access to healthcare, it is important that we support this bill and provide those in need of assistance to help certify disability requests. Due to the lack of sufficient healthcare providers, specifically physicians, it is imperative that APRNs have this privilege in order to decrease the workload for our doctors statewide.

It is my hope that you will help in this effort and appreciate your support In advance.

Mahalo,
Celeste M Baldwin

Celeste M. Baldwin, PhD, APRN, CNS
UH Maui College Nursing Program

LATE

SB-2375-SD-1

Submitted on: 2/23/2018 12:22:29 AM

Testimony for WAM on 2/23/2018 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Teresa Parsons	Individual	Support	No

Comments:

Senators

I stand in strong support of this measure. SB 2375 SD1 permits advanced practice registered nurses to certify an employee's disability. In many settings, the APRN is the primary care manager for patients. It is unfair to force patients to seek out a different provider just for a signature when the physician most likely does not know the patient's history.

I urge you to support this measure to ensure APRNs in Hawai'i are able to practice at full scope.