

SB857, SD1

RELATING TO WORKERS
COMPENSATION

LAB, CPC, FIN

SB857 SD1



Submit Testimony

Measure Title: RELATING TO WORKERS' COMPENSATION.

Report Title: Workers' Compensation; Employers; Service Providers; Payment; Disagreement; Resolution Procedures

Description: 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 who fail to adhere to the notice requirements. Establishes resolution procedures for employers and providers who have a reasonable disagreement over liability for services provided an injured worker. Requires an employee whose claim is found to be non-compensable to submit reimbursements for services rendered. Effective 1/7/2059. (SD1)

Companion: [HB979](#)

Package: None

Current Referral: LAB, CPC, FIN

Introducer(s): KEITH-AGARAN, K. RHOADS

Sort by Date		Status Text
1/25/2017	S	Introduced.
1/25/2017	S	Passed First Reading.
1/25/2017	S	Referred to JDL, WAM.
2/1/2017	S	The committee(s) on JDL has scheduled a public hearing on 02-07-17 9:00AM in conference room 016.
2/7/2017	S	The committee(s) on JDL recommend(s) that the measure be PASSED, WITH AMENDMENTS. The votes in JDL were as follows: 4 Aye(s): Senator(s) Keith-Agaran, K. Rhoads, Kim, L. Thielen; Aye(s) with reservations: none ; 0 No(es): none; and 1 Excused: Senator(s) Gabbard.
2/13/2017	S	Reported from JDL (Stand. Com. Rep. No. 151) with recommendation of passage on Second Reading, as amended (SD 1) and referral to WAM.
2/13/2017	S	Report adopted; Passed Second Reading, as amended (SD 1) and referred to WAM.
2/24/2017	S	The committee(s) on WAM will hold a public decision making on 02-27-17 9:35AM in conference room 211.
2/27/2017	S	The committee(s) on WAM recommend(s) that the measure be PASSED, UNAMENDED. The votes in WAM were as follows: 8 Aye(s): Senator(s) Tokuda, English, Galuteria, Harimoto, K. Kahele, Riviere, Shimabukuro, Taniguchi; Aye(s) with reservations: none ; 0 No(es): none; and 3 Excused: Senator(s) Dela Cruz, Inouye, Wakai.
3/3/2017	S	Reported from WAM (Stand. Com. Rep. No. 687) with recommendation of passage on Third Reading.
3/3/2017	S	One Day Notice 03-07-17.
3/7/2017	S	Report adopted; Passed Third Reading. Ayes, 25; Aye(s) with reservations: none . Noes, 0 (none). Excused, 0 (none). Transmitted to House.
3/7/2017	H	Received from Senate (Sen. Com. No. 278) in amended form (SD 1).
3/9/2017	H	Pass First Reading
3/9/2017	H	Referred to LAB, CPC, FIN, referral sheet 27
3/10/2017	H	Bill scheduled to be heard by LAB on Tuesday, 03-14-17 9:00AM in House conference room 309.

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 Hawaii's existing
2 workers' compensation has been plagued by delays and denials,
3 and in many of those cases, insurers seem to automatically deny
4 the claim "pending investigation". These investigations may
5 include reviewing reports from an independent medical examiner,
6 interviewing other employees, looking at videotapes, or combing
7 through old medical records for evidence that the workplace
8 injury was related to a pre-existing condition. While the
9 insurer considers, sometimes for months, the patient is at times
10 unable to use private insurance or get money with which to live.

11 Accordingly, the purpose of this Act is to limit employers'
12 use of denying a claim pending investigation and impose fines
13 and penalties for those employers who continue doing so without
14 reasonable cause.

15 SECTION 2. Chapter 386, Hawaii Revised Statutes, is
16 amended by adding a new section to be appropriately designated
17 and to read as follows:



1 "§386- Payment by employer; duty to service provider;
2 disagreement with service provider; resolution procedures. (a)
3 Notwithstanding any other law to the contrary, the employer
4 shall pay for all medical services required by the employee due
5 to the nature of the compensable injury and the process of
6 recovery. The employer shall not be required to pay for care
7 unrelated to the compensable injury.

8 (b) The employer shall not controvert a claim for
9 services:

10 (1) Without reasonable cause; or

11 (2) While the claim is pending investigation;

12 provided that a claim shall be presumed compensable when
13 submitted by an employee who is excluded from health care
14 coverage under the Hawaii Prepaid Health Care Act.

15 (c) Upon receipt by an employer of a notification of
16 services rendered or a bill pursuant to subsection (a), if an
17 employer controverts the claim for services rendered, the
18 employer shall notify the provider of that fact within thirty
19 calendar days of receipt of the notification of services
20 rendered or bill. Failure by the employer to submit timely
21 notice to the provider of services shall render the employer



1 liable for services provided until the employer satisfies the
2 notice requirement.

3 (d) Any employer who has received a notification of
4 services rendered or bill by a provider of services rendered
5 shall be liable for those services and shall pay all charges
6 listed in the notification of services rendered or bill within
7 thirty calendar days of receipt of such charges, except for
8 items where there is reasonable disagreement. If more than
9 thirty calendar days lapse between the employer's receipt of an
10 undisputed notification of services rendered or bill and the
11 date of the employer's payment, the provider may increase the
12 total outstanding balance owed by one per cent per month.

13 (e) In the event of reasonable disagreement, the employer
14 shall pay for all acknowledged charges and shall notify the
15 provider of the denial of any payment including the reason for
16 the denial within thirty calendar days of receipt of a bill or
17 notification of services rendered and provide a copy of the
18 denial to the employee. The employer's denial shall include a
19 statement as follows:

20 "IF THE PROVIDER OF SERVICE DOES NOT AGREE WITH THE
21 EMPLOYER'S STATED REASON FOR DENIAL OF PAYMENT, THE



1 PROVIDER OF SERVICE MAY FILE A BILL DISPUTE REQUEST
2 WITH THE DIRECTOR OF THE HAWAII DEPARTMENT OF LABOR
3 AND INDUSTRIAL RELATIONS. THE BILL DISPUTE REQUEST
4 SHALL BE CLEARLY IDENTIFIED AS A 'BILLING DISPUTE
5 REQUEST' IN CAPITAL LETTERS AND IN NO LESS THAN TEN
6 POINT FONT ON THE FRONT OF THE FIRST PAGE OF THE
7 REQUEST AND ON THE FRONT OF THE ENVELOPE IN WHICH THE
8 REQUEST IS SENT. THE BILL DISPUTE REQUEST SHALL
9 INCLUDE A COPY OF THE ORIGINAL NOTIFICATION OF
10 SERVICES RENDERED OR BILL SENT TO THE EMPLOYER. ANY
11 BILL DISPUTE REQUEST SHALL BE FILED WITHIN THIRTY
12 CALENDAR DAYS AFTER POSTMARK OF THE EMPLOYER'S DENIAL
13 OF PAYMENT. THE PROVIDER OF SERVICE'S FAILURE TO
14 SUBMIT A TIMELY BILL DISPUTE REQUEST SHALL BE
15 CONSIDERED AS ACCEPTANCE OF THE EMPLOYER'S DENIAL OF
16 PAYMENT."

17 (f) Upon receipt of a bill dispute request, the director
18 shall send notice to both parties and the parties shall
19 negotiate during the thirty-one calendar days following the date
20 of the notice from the director. If the parties fail to enter
21 into an agreement during the thirty-one calendar days, then



1 within fourteen calendar days following the thirty-one day
2 negotiating period, either party may file a request, in writing,
3 to the director to review the dispute; provided that the
4 requesting party sends notice to the non-requesting party. Upon
5 receipt of the request for review, the director shall send the
6 parties a second notice requesting that each party file a
7 position statement with the director, including substantiating
8 documentation that describes the amount in dispute and all
9 actions taken to resolve the dispute during the fourteen
10 calendar days following the date of the second notice from the
11 director. The director shall review the positions of both
12 parties and render an administrative decision without hearing.
13 The director may assess a service fee of up to \$1,000 payable to
14 the general fund against one or both parties who fail to
15 negotiate in good faith. Denial of payment without reasonable
16 cause shall be considered a failure to negotiate in good faith.

17 (g) Whenever a controverted claim is found to be non-
18 compensable, the employee shall be liable for reimbursement of
19 benefits or payments received under this section, whether
20 received from an employer, insurer, or the special compensation
21 fund, to be made to the source from which the compensation was



1 received, and may include recoupment by the insurer of all
2 payments made for medical care, medical services, vocational
3 rehabilitation services, and all other services rendered for
4 payment under this section."

5 SECTION 3. New statutory material is underscored.

6 SECTION 4. This Act shall take effect on January 7, 2059.

7



Report Title:

Workers' Compensation; Employers; Service Providers; Payment; Disagreement; Resolution Procedures

Description:

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 who fail to adhere to the notice requirements. Establishes resolution procedures for employers and providers who have a reasonable disagreement over liability for services provided an injured worker. Requires an employee whose claim is found to be non-compensable to submit reimbursements for services rendered. Effective 1/7/2059.
(SD1)

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



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 13, 2017

**TESTIMONY TO THE
HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT**

For Hearing on Tuesday, March 14, 2017
9:00 a.m., Conference Room 309

BY

JAMES K. NISHIMOTO
DIRECTOR

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

WRITTEN TESTIMONY ONLY

TO CHAIRPERSON JOHANSON, VICE CHAIR HOLT, AND MEMBERS OF THE
COMMITTEE:

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

The purposes of S.B. 857, S.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 who fail to adhere to the notice requirements; establish resolution procedures for employers and providers who have a reasonable disagreement over liability for services provided an injured worker; and require an employee whose claim is found to be non-compensable 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 proposed subsection (b)(2) provision 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 due to the nature of 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 sixty to thirty 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
830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813
www.labor.hawaii.gov
Phone: (808) 586-8844 / Fax: (808) 586-9099
Email: dllr.director@hawaii.gov

March 14, 2017

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

Date: Tuesday, March 14, 2017
Time: 9:00 a.m.
Place: Conference Room 309, State Capitol

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

Re: S.B. No. 857 S.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 bill shortens 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 of 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 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 offers comments on the measure below.

II. CURRENT LAW

The Workers' Compensation Medical Fee Schedule (WCMFS), HAR section 12-15-94 Payment by employer, allows for the following:

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 shall send the parties a notice and the parties shall 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 Director shall send both parties a second notice requesting they submit position statements and documentation within fourteen days following the receipt of this second notice. The Director shall review the positions of both parties and render an administrative decision. A service fee of \$500 will 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 (PHC) Act, employers are required to provide PHC coverage for their eligible employees. However, under section 393-3, HRS, the following entities are not considered to be "employers" and are not covered under the health care law.

- 1) The State, any of its political subdivisions, or any instrumentality of the State or its political subdivisions;
- 2) The United States government or any instrumentality of the United States;
- 3) Any other state or political subdivision thereof or instrumentality of such state or political subdivision;
- 4) (4) Any foreign government or instrumentality wholly owned by a foreign government, if (A) the service performed in its employ is of a character similar to that performed in foreign countries by employees of the United States government or of an instrumentality thereof, and (B) the United States Secretary of State has certified or certifies to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and of instrumentalities thereof.

Exclusions from the Prepaid Health Care Act in section 393-5, HRS, include the following:

- 1) Service performed by an individual in the employ of an employer who, by the laws of the United States, is responsible for care and cost in connection with such service;
- 2) Service performed by an individual in the employ of [the] individual's spouse, son, or daughter, and service performed by an individual under the age of twenty-one in the employ of the individual's father or mother;
- 3) Service performed in the employ of a voluntary employee's beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of the association or their dependents or their designated beneficiaries, if:
 - a. Admission to membership in the association is limited to individuals who are officers or employees of the United States government; and
 - b. No part of the net earnings of the association inures (other

than through such payments) to the benefits of any private shareholder or individual;

- 4) Service performed by an individual for an employer as an insurance agent or as an insurance solicitor if all service performed by the individual for the employer is performed for remuneration by way of commission;
- 5) Service performed by an individual for an employer as a real estate salesperson or as a real estate broker if all service performed by the individual for the employer is performed for remuneration by way of commission;
- 6) Service performed by an individual who, pursuant to the federal Economic Opportunity Act of 1964, is not subject to the provisions of law relating to federal employment, including unemployment compensation;
- 7) Domestic in-home and community-based services for persons with developmental and intellectual disabilities under the Medicaid home and community-based services program pursuant to title 42 Code of Federal Regulations sections 440.180 and 441.300, and title 42 Code of Federal Regulations, part 434, subpart A, as amended, or when provided through state funded medical assistance to individuals ineligible for Medicaid, and identified as chore, personal assistance and habilitation, residential habilitation, supported employment, respite, and skilled nursing services, as the terms are defined and amended from time to time by the department of human services, performed by an individual whose services are contracted by a recipient of social service payments and who voluntarily agrees in writing to be an independent contractor of the recipient of social service payments; and
- 8) Domestic services, which include attendant care, and day care services authorized by the Department of Human Services under the Social Security Act, as amended, or when provided through state-funded medical assistance to individuals ineligible for Medicaid, when performed by an individual in the employ of a recipient of social service payments. For the purposes of this paragraph only, a "recipient of social service payments" is a person who is an eligible recipient of social services such as attendant care or day care services.

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, Form HC-5, saying they do not want PHC coverage from the employer because they have other PHC coverage.

III. COMMENTS ON THE SENATE BILL

The Department appreciates the intent of SB857 SD1, as it proposes to streamline the investigation and bill dispute process and offers a faster resolution of disputed charges between the employer and the medical provider. DLIR offers the following comments:

- DLIR suggests the measure should address the Prepaid healthcare contracts that exclude WC in violation of section HAR 12-12-45¹.
- SD1 adds to subsection (b) that the claim is presumed compensable when submitted by an employee excluded by the PHC Act. As stated in the current law above, there are many exclusions to the PHC Act. 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 11-15) 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.
- By increasing the service fee for parties who fail to negotiate in good faith, this bill may potentially ease the administrative burden of resolving billing disputes by encouraging parties to settle their differences before sending their differences to the Department to act on.
- The Department has concerns regarding shortening the time period from sixty calendar days to thirty calendar days for the employer/carrier to contest and pay the provider of service. The carrier often has a heavy workload of cases and many claims to monitor, adjust, and pay. 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,² 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.

- SD1 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

¹ **§12-12-45 Controverted workers' compensation claims.** 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. [Eff: 5/7/81] (Auth: HRS§393-32) (Imp: HRS §§393-7, 392-32)

² **§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.

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 13, 2017 10:49 AM
To: LABtestimony
Cc: kmizusawa@honolulu.gov
Subject: Submitted testimony for SB857 on Mar 14, 2017 09:00AM

SB857

Submitted on: 3/13/2017

Testimony for LAB on Mar 14, 2017 09:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Paul K. W. Au	City & County of Honolulu	Oppose	Yes

Comments: None

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



HAWAII MEDICAL ASSOCIATION

1360 S. Beretania Street, Suite 200, Honolulu, Hawaii 96814
Phone (808) 536-7702 Fax (808) 528-2376
www.hawaiimedicalassociation.org

FROM:
HAWAII MEDICAL ASSOCIATION
Dr. Christopher Flanders, Executive Director
Lauren Zirbel, Community and Government Relations

To: COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
Chair Rep. Aaron Ling Johanson and
Vice Chari Rep. Daniel Holt

Re: SB 857 SD1 – Denied Pending Investigation – STRONG SUPPORT

DATE: Tuesday, March 14, 2017
TIME: 9:00 AM
PLACE: Conference Room 309

Please accept my testimony in STRONG SUPPORT of SB 857.

Currently when a patient is denied pending investigation, the WC Payer nor the Private Insurance Payer will cover the patients treatment. This bill is hoping to clarify who will pay for the treatment if denied pending investigation. This particular draft of the bill clarifies which payer pays the provider for treatment. It also clarifies how the payer will get reimbursed if the claim is later compensable.

HMA OFFICERS

President – Bernard Robinson, MD President-Elect – William Wong, Jr., MD Secretary – Thomas Kosasa, MD
Immediate Past President – Scott McCaffrey, MD Treasurer – Michael Champion, MD
Executive Director – Christopher Flanders, DO

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 13, 2017 5:34 AM
To: LABtestimony
Cc: moore4640@hawaiiantel.net
Subject: *Submitted testimony for SB857 on Mar 14, 2017 09:00AM*

SB857

Submitted on: 3/13/2017

Testimony for LAB on Mar 14, 2017 09:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
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

The Twenty-Ninth Legislature
Regular Session of 2917

THE HOUSE OF REPRESENTATIVES
Committee on Labor and Public Employment
Representative Aaron Ling Johanson, Chair
Representative Daniel Holt, Vice Chair
State Capitol, Conference Room 309
Tuesday, March 14, 2017; 9:00 a.m.

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

The ILWU Local 142 supports S.B. 857 SD 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 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. Thank you for the opportunity to provide testimony on this measure.

TESTIMONY OF LINDA O'REILLY

HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
Representative Aaron Ling Johanson, Chair
Representative Daniel Holt, Vice Chair

Tuesday, March 14, 2017
9:00 a.m., Room 309

SB 857, SD1

Chair Johanson, Vice Chair Holt, and members of the Committee on Labor & Public Employment, my name is Linda O'Reilly, Assistant Vice President of Claims – Workers' Compensation 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 proposes to reduce an employers' amount of time in which to determine compensability 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. For cases that are denied pending additional information, we believe the sixty days allowed in HAR 12-15-94 is the appropriate amount of time. If this is cut in half to thirty days as it is in this bill, the result will be more disputes. Most of the time, subpoenaed medical records are received by the employer within 60 days and the employer then can use those records to assist in their determination of compensability. If this is cut in half, subpoenaed medical records will likely have not been delivered and therefore a denial would be issued resulting in a dispute for payment.

If DLIR believes employers are arbitrarily denying claims without reasonable cause, we believe directly addressing those in violation of the current law is a more workable solution.

Finally, SD 857, SD1 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.

We ask that this bill be held.

Thank you for the opportunity to testify.

1065 Ahua Street
Honolulu, HI 96819
Phone: 808-833-1681 FAX: 839-4167
Email: info@gcawhawaii.org
Website: www.gcawhawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

March 14, 2017

TO: HONORABLE AARON LING JOHANSON, CHAIR, HONORABLE DANIEL HOLT, VICE CHAIR AND MEMBERS OF THE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

SUBJECT: **OPPOSITION TO S.B. 857, SD1, 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 who fail to adhere to the notice requirements. Establishes resolution procedures for employers and providers who have a reasonable disagreement over liability for services provided an injured worker. Requires an employee whose claim is found to be non-compensable to submit reimbursements for services rendered. Effective 1/7/2059. (SD1)

COMMITTEE HEARING

DATE: March 14, 2017
TIME: 9:00 a.m.
PLACE: Conference Room 309

Dear Chair Johanson, Vice Chair Holt 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, 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.

SB857, SD1

Late Testimony

LATE

LATE

LATE

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 13, 2017 3:09 PM
To: LABtestimony
Cc: lhamano@vmchawaii.com
Subject: Submitted testimony for SB857 on Mar 14, 2017 09:00AM

SB857

Submitted on: 3/13/2017

Testimony for LAB on Mar 14, 2017 09:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
laurie hamano	VMC	Support	No

Comments: I strongly support this measure.

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



**SB 857sd1, Relating to Workers' Compensation
House LAB Hearing**

Tuesday, March 14, 2017 – 9:00 am

Room 309

Position: Support

LATE

LATE

LATE

Chair Johanson and Members of the House LAB 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.

Administrative Rules Recommendations, of which mention in the Committee Report is requested:

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.



LATE

LATE

LATE

To: [COMMITTEE ON LABOR & PUBLIC EMPLOYMENT](#)

Chair Rep. Aaron Ling Johanson and

Vice Chari Rep. Daniel Holt

DATE: Tuesday, March 14, 2017

TIME: 9:00 AM

PLACE: Conference Room 309

SUPPORT FOR SENATE BILL 857 SD1

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



Chamber of Commerce HAWAII
The Voice of Business

LATE

Testimony to the House Committee on Labor & Public Employment
Tuesday, March 14, 2017 at 9:00 A.M.
Conference Room 309, State Capitol

LATE

RE: SENATE BILL 857 SD1 RELATING TO WORKERS' COMPENSATION

Chair Johanson, Vice Chair Holt, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **opposes** SB 857 SD1, 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.

LATE

LATE

LATE

LABtestimony

From: Scott McCaffrey <drscottymac@gmail.com>
Sent: Tuesday, March 14, 2017 7:20 AM
To: LABtestimony
Subject: Re SB 859 and SB 857 SD 1--Strong Support: LATE TESTIMONY

Dear Chair and Commity Members :

Please support these bills both of which will protect injured workers from unfair and often abusive "cost control remedies" by insurers/payers. They both will help!

For questions L can be reached thru my office and I invite your call.
Mahalo

Scott McCaffrey MD
Workstar Injury Recovery Center

LATE

LATE

LATE

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 13, 2017 1:52 PM
To: LABtestimony
Cc: tonyhunstiger@hotmail.com
Subject: Submitted testimony for SB857 on Mar 14, 2017 09:00AM

SB857

Submitted on: 3/13/2017

Testimony for LAB on Mar 14, 2017 09:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
tony hunstiger	Individual	Support	No

Comments: As a VR counselor helping injured workers in Hawaii for over twenty years, I am in strong support of this measure. Transparency is needed to ensure the best possible results. Injured workers are often victims of trauma who require support and who should be allowed every bit of help available.

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

LATE

LATE

LATE

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 13, 2017 1:58 PM
To: LABtestimony
Cc: tonyhunstiger@hotmail.com
Subject: Submitted testimony for SB857 on Mar 14, 2017 09:00AM

SB857

Submitted on: 3/13/2017

Testimony for LAB on Mar 14, 2017 09:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Tony Hunstiger, M.Ed. CRC	Individual	Support	No

Comments: I am in support of this bill. Currently when a patient is denied medical treatment pending investigation, neither the WC Payor nor the Private Insurance Payor will cover the patients' treatment, which often mean the injured worker is unable to receive medical treatment for their work injury. This bill clarifies who pays for the treatment when the carrier denies treatment pending investigation. This bill clarifies which payor pays the provider for treatment. It also clarifies how the payor will get reimbursed if the claim is later compensable.

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

LATE

LATE

LATE

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 13, 2017 10:58 PM
To: LABtestimony
Cc: cwilson@ahcs.com
Subject: Submitted testimony for SB857 on Mar 14, 2017 09:00AM

SB857

Submitted on: 3/13/2017

Testimony for LAB on Mar 14, 2017 09:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
cathy wilson	Individual	Support	No

Comments: The legislator needs to get involved to outline which insurance company is to pay for a injured workers' claim if it's deemed denied pending investigation. If the legislator does not, then injured workers and patients will continue to sit in limbo, untreated and unable to return to work.

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

LATE

holt1 - Joyleanne

From: mankwan wong <mankwanw@msn.com>
Sent: Monday, March 13, 2017 9:39 PM
To: LABtestimony
Subject: SB 857 SD1

LATE

To: [COMMITTEE ON LABOR & PUBLIC EMPLOYMENT](#)

Chair Rep. Aaron Ling Johanson and
Vice Chari Rep. Daniel Holt

Re: **SB 857 SD1**

DATE: Tuesday, March 14, 2017

TIME: 9:00 AM

PLACE: Conference Room 309

LATE

Please accept my testimony in STRONG SUPPORT of SB 857 SD1

I strongly support this bill as a physician who actively treats work comp patients. Frequently, I see denials from WC payors and/or private insurance carriers, pending investigation by the carriers of the injured workers' claims. Sometimes even if the claim appears valid, the denial pending investigation delays patient care and causes unnecessary pain and suffering. There were cases in which I had to provide free care and medications to the patients until the claims were finally approved after 2 years! The financial burden on dedicated providers for providing timely care without any insurance payment is simply unfair. Clarification of who covers the treatment initially will go a long way in ensuring timely and effective care of the injured workers, with the goal of returning to work in a timely and safe manner.

Thank you for your kind consideration.

Sincerely,

Mankwan Wong MD

LATE

To: [COMMITTEE ON LABOR & PUBLIC EMPLOYMENT](#)
Chair Rep. Aaron Ling Johanson and
Vice Chair Rep. Daniel Holt

LATE

RE:(SB 857 SD 1)

DATE: [Tuesday, March 14, 2017](#)
TIME: [9:00 AM](#)
PLACE: Conference Room 309

LATE

Please accept my testimony in STRONG SUPPORT of (SB 857 SD 1)

I am writing in strong support of: SB 857 SD 1. Please note the following.

- 1) That denying the injured patient's treatment pending an investigation prolongs the patient's suffering.
- 2) That denying the injured patient's treatment pending an investigation could contribute to additional severe injuries, as the patient is left untreated.
- 3) That denying the injured patient's treatment pending an investigation is not cost effective, as the patient is not able to return to work in a timely manner.

Respectfully submitted by: Helen Ann Lee

LATE

LATE

LATE

TESTIMONY BEFORE THE HOUSE OF REPRESENTATIVES

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Tuesday, March 14, 2017
9:00 A.M.

S.B. 857, SD 1
RELATING TO WORKERS' COMPENSATION; EMPLOYERS; SERVICE PROVIDERS;
PAYMENTS; PAYMENT; DISAGREEMENT; RESOLUTION PROCEDURES

By Marleen Silva
Director, Workers' Compensation
Hawaiian Electric Company, Inc.

Chair Johanson, Vice Chair Holt, and Members of the Committee:

Hawaiian Electric Co. Inc., its subsidiaries, Maui Electric Company, LTD., and Hawaii Electric Light Company, Inc. **strongly oppose S.B. 857, SD1.** Our companies represent over 2,700 employees throughout the State.

This bill proposes to require 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 creates a "presumption of compensability" for claims submitted by employees excluded from coverage under the Hawaii Prepaid Health Care Act. It establishes requirements that employers notify providers of billing disagreements; allows providers to charge an additional rate to employers who fail to adhere to the notice of requirements; establishes resolution procedures for employers and providers who have a reasonable disagreement over liability for services provided; and requires an employee whose claim is found to be non-compensable to submit reimbursements for services rendered.

We strongly believe many of the provisions in this proposal regarding disputes are problematic and unnecessary. In addition, it appears to create a legal obligation of employers to medical providers, which creates a serious conflict of interest that could unintentionally harm injured employees.

Under the current statutes, employers are mandated to pay for all treatment related to the compensable injury, and therefore have the right and responsibility to reasonably investigate questionable claims and services. There is also an established process to address controverted workers' compensation claims and bill disputes. In addition, Hawaii's Prepaid Health Care Law specifically mandates contracted group health to be responsible for the medical care of the employee during the period when a workers' compensation claim or treatment is under investigation. However, as noted by the testimony of the Director of the Department of Labor and Industrial Relations, not all healthcare contracts comply with the rules in Hawaii's Prepaid Health Care Law regarding controverted workers' compensation claims. Therefore we would suggest language be incorporated into this proposal to require adherence.

For these reasons, we strongly oppose S.B. 857, SD1 and respectfully request this measure be held. Thank you for this opportunity to submit testimony.