



STATE OF HAWAII
KA MOKU'ĀINA O HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
KA 'OIHANA PONO LIMAHANA

February 8, 2024

To: The Honorable Mark M. Nakashima, Chair,
The Honorable Jackson D. Sayama, Vice Chair, and
Members of the House Committee on Consumer Protection & Commerce

Date: Thursday, February 8, 2024
Time: 2:00 p.m.
Place: Conference Room 329, State Capitol

From: Jade T. Butay, Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. 1637 H.D.1 RELATING TO WORKERS' COMPENSATION

I. OVERVIEW OF PROPOSED LEGISLATION

The DLIR **supports the intent** of this proposal and suggests an amendment. HB1637 HD1 proposes to amend Section 386-21.1, Hawaii Revised Statutes (HRS) to clarify that when claims are controverted, the injured employee's private health care plan must by default pay or provide medical care services and supplies until the claim is either accepted or determination of compensability is established. A private health care plan violating this section shall be fined \$10,000 or triple the amount of medical costs (whichever is greater) incurred by the injured employee during the investigation. If the claim is accepted or deemed compensable, the private health care plan may seek reimbursement from the employer.

This proposal also provides that the injured employee shall be reimbursed for any out-of-pocket medical expenses related to the injury. Further, if the employer's investigation exceeds ninety days, the employee's private health care plan that covered the medical expenses can charge the employer for the medical expenses plus three percent. This proposal also clarifies that a claim that is not accepted shall be deemed denied, regardless of any modifiers placed on the denial such as denied pending investigation.

II. CURRENT LAW

Section 386-21.1 specifies that when a claim is controverted, the injured employee's private health care plan shall pay for or provide medical care, services, and supplies in accordance with the private health care contract. When the claim is accepted or determined to be compensable, the employer shall reimburse the

private health care plan and the injured employee in amounts as authorized by this chapter and rules adopted by the director.

III. COMMENTS ON THE HOUSE BILL

DLIR supports this measure and is optimistic that the measure as amended will rebuild medical provider confidence to provide much needed timely medical care without apprehension. It is the department's opinion that such timely medical care could also benefit the private health care contractor as well, should the injury be deemed not work related, as prompt medical treatment may lead to faster recovery and in turn, lessen the need for prolonged medical treatment.

DLIR, however, is concerned that the employer will be charged an administrative fee equal to three percent of the total bill if its investigation is not completed within ninety days. Often times this matter is out of the employer's control as they await claimant to sign a medical release and/or a doctor to provide medical reports in a timely manner.

Therefore, DLIR suggests striking out the following from Page 1, line 16 through Page 2 line 4: *"provided further that the private health care plan may also charge the employer an administration fee equal to three per cent of total amount paid by the private health care plan, to be paid to the private health care plan, if the investigation is not completed within ninety days."*

‘
,

TESTIMONY OF MILIA LEONG

COMMITTEE ON CONSUMER PROTECTION & COMMERCE
Representative Mark M. Nakashima, Chair
Representative Jackson D. Sayama, Vice Chair

Thursday, February 8, 2024
2:00 p.m.

HB 1637, HD1

Chair Nakashima, Vice Chair Sayama, and members of the Committee on Consumer Protection & Commerce, my name is Milia Leong, Executive Claims Administrator for HEMIC Insurance Managers, Inc. I am testifying today on behalf of Hawaii Insurers Council. The Hawaii Insurers Council 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 offers **comments** on this bill. This bill clarifies that a health insurer must pay for medical care pending the acceptance of a workers' compensation claim or determination of compensability. The bill also allows a health insurer to charge the employer an administration fee of 3% of the total amount paid if the investigation is not completed in 90 days. Finally, the bill allows an injured worker to be reimbursed for any co-pays and out-of-pocket expenses made prior to the determination of compensability.

Hawaii Insurers Council strongly supports the intent of the bill which is to ensure that health insurers pay for medical care if a workers' compensation claim is denied. This provision has been in the law since prepaid healthcare was enacted.

Hawaii's Prepaid Healthcare Act which was enacted in 1974, was to provide widespread health insurance coverage to Hawaii's workforce. This broad and bold standard was ahead of its time by decades as only recently, the Obama Administration

enacted this type of coverage across the nation. We therefore believe that as a public policy, it is part of the broad mandate to health insurers to provide this coverage without charging the workers' compensation insurer for any fees if it is later accepted as a covered workers' compensation claim. A 3% fee based on the amount paid by the health insurer is not reasonable and should be borne by the health insurer as part of its mandate to broadly cover workers.

The section of the bill that allows an injured worker to get reimbursed for any out-of-pocket expenses including co-pays should be clarified that *the provider* must reimburse the injured worker. The workers' compensation insurer is prohibited from charging any co-pays to the injured worker and is further restricted from reimbursing providers more than the law allows.

Finally, the requirement that the employer's investigation is completed within 90 days is not realistic and may not be possible due to reasons outside the insurer's control. For example, if the injured worker refuses to sign a medical release, the claim cannot be properly investigated, and the insurer should not be punished for actions outside their control. Other reasons include availability of IMEs and subpoenas. It is important to note that delays in the determination of compensability may be due to a complex medical case with preexisting injuries. A 3% fee of any amounts paid by a health insurer while compensability is being determined could result in thousands of dollars in an "administrative fee." We believe this provision is punitive to the workers' compensation insurer while delays may be caused by reasons outside that insurer's control. Every workers' compensation claim is fact-specific and placing a time limit to determine compensability for all claims could impact a workers' compensation insurer's right to due process.

We ask that this bill be amended to remove the 90-day investigation period, remove the 3% penalty, and clarify that the provider must reimburse the injured worker for out-of-pocket expenses.

Thank you for the opportunity to testify.

HB-1637-HD-1

Submitted on: 2/7/2024 11:08:32 AM

Testimony for CPC on 2/8/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Jerald Garcia	HAWAII INSTITUTE FOR PAIN	Support	Written Testimony Only

Comments:

Jerald Garcia, MD of the Hawaii Institute for Pain is in support of House Bill 1637. HB1637 clarifies that an injured employee's private health care plan must, by default be responsible for the medical care, services, and supplies pending acceptance of the claim or determination of compensability and may seek reimbursement from the employer if accepted or compensable. As it stands, the burden of cost for the care of patients placed in this vague situation, lies on both the patient and the already overburdened medical practitioner who often times has to absorb the loss of providing care to these patients, be it through severely delayed payments or worse, the absence thereof.

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. Therefore, the intent of this bill, to add teeth to the existing law requiring the private health insurer to treat the injured employee while the claim is pending investigation, is laudable, and I strongly support this measure.



Primary Care Clinic of Hawaii

1807 N King Street, Honolulu, HI 96819
Office: (808) 841-4195 | Fax: (808) 841-0627

To the members of the Consumer Protection and Commerce Committee,

As a physician serving dozens of workers' compensation patients across Oahu and Lihue, I, Rainier Dennis D. Bautista MD, DABFM, FAAFP, have witnessed firsthand the profound suffering and distress caused by delayed medical treatment due to protracted claim investigations. My clinical experience underscores the urgent need for legislative measures like House Bill 1637, which seeks to address these critical shortcomings in our current system.

HB1637 mandates that during the investigation of workers' compensation claims, injured employees' private health insurance should temporarily cover their medical care, services, and supplies. This provision is pivotal, as it ensures that individuals are not deprived of necessary treatment due to administrative processes. The bill's requirement for health insurers to potentially seek reimbursement from employers post-claim resolution further ensures a fair and equitable system.

Moreover, the introduction of a stringent penalty for non-compliance, either \$10,000 or three times the medical expenses incurred by the employee during the investigation, is a crucial deterrent against the unnecessary delay of claims. This measure is vital for encouraging expedience and fairness in handling workers' compensation cases.

My clinical experiences have shown me the tangible impact of delayed treatment on workers' health outcomes. Patients often face not just physical setbacks but also significant emotional and financial strain. The current prevalence of immediate claim denials, under the pretext of 'pending investigation,' exacerbates this issue, leaving injured workers in a state of uncertainty and hardship.

HB1637 is a commendable step forward in mitigating these challenges. By ensuring that injured workers receive prompt medical attention, the bill addresses a fundamental gap in the current system. It aligns with our moral obligation to support the health and well-being of Hawaii's workforce, particularly during their most vulnerable moments.

In conclusion, my firsthand experiences with the ramifications of delayed treatment in workers' compensation cases strongly inform my support for HB1637. This bill not only promises to improve the efficiency and fairness of the workers' compensation system but also reflects a deep commitment to the health and security of our workforce. I urge its swift passage to alleviate the unnecessary suffering of injured workers and to uphold the principles of justice and compassion that define our community.

Rainier Dennis D. Bautista MD, FAAFP



February 8, 2024

The Honorable Mark M. Nakashima, Chair
The Honorable Jackson D. Sayama, Vice Chair
House Committee on Consumer Protection & Commerce

Re: HB 1637 HD1 – WORKERS' COMPENSATION LAW

Dear Chair Nakashima, Vice Chair Sayama, and Members of the Committee:

Hawaii Medical Service Association (HMSA) appreciates the opportunity to provide comments on HB 1637 HD1, which clarifies that with controverted claims, an injured employee's private health care plan must by default pay or provide medical care, services, and supplies pending acceptance of the claim or determination of compensability and may seek reimbursement from the employer if accepted or compensable and establishes penalties.

HMSA supports the intent of the legislature to address the needs of workers who are injured or find themselves ill due to their job. We want to note that there is a broad range of severity of potential fines and encourage these sections to be revisited to ensure fairness and to clarify which department will be responsible for enforcement. We also respectfully request the following amendments:

1. Page 1, Lines 9-11: “If the claim is accepted or determined to be compensable, the private health care plan ~~may~~ shall be entitled to seek reimbursement from the employer...”
2. Page 1, line 17-18, “...further that the private health care plan ~~may~~ shall be entitled to also charge the employer an administration fee...”
3. Page 2, line 3-4; “...to be paid to the private health care plan, if the investigation is not completed within ~~ninety~~ sixty days.” We request that the committee align the timeframe to what is currently statutorily required pursuant to HRS §386-86.
4. Page 2, Lines 8-11: “Any private health care plan violating this section shall be fined \$10,000 ~~or triple the amount of medical costs incurred by the injured employee during the time the claim is under investigations, whichever is greater.~~”

The health of Hawaii is a priority. Thank you for the opportunity to testify on this measure.

Sincerely,

Dawn Kurisu
Assistant Vice President
Community and Government Relations



LATE

**Committee on Consumer Protection and Commerce
February 8, 2024, at 2pm
Room 329**

Re: Relating to Worker’s Compensation Law

Aloha Chair Nakashima, Vice Chair Sayama and Committee Members,

The Society of Human Resource Management – Hawaii (“SHRM”) respectfully opposes HB 1637 to the extent it imposes the ability of private healthcare insurers to obtain a 3% charge against an employer for administrative costs and to the extent it requires a claim to be accepted or denied within 90 days or be deemed denied for the purposes of this section.

SHRM Hawaii serves and represents nearly 600 members and employers’ statewide. Human resource management is a critical component to the success and survival of the many businesses that make up our local economy. HR professionals are responsible for evaluating and balancing the needs of both the employers and employees and caring for businesses’ most valuable asset: the working people of our state.

Under current law, when a workers’ compensation claim is controverted, the injured employee’s private health care plan is required to pay for or provide medical care, services, and supplies in accordance with the private health care contract. When the claim is accepted or determined to be compensable, the employer is required to reimburse the private health care plan and the injured employee in amounts as authorized by this chapter and rules adopted by the director.

With the current amendments after the January 30, 2024, hearing, SHRM remains concerned that the employer will be charged an “administrative fee”

equal to three percent of the total bill incurred by the private provider if the employer's investigation of the claim is not completed within ninety (90) days. However, the changes fail to recognize that the timing of accepting or denying claims is frequently beyond the employer's control.

The worker's compensation system is unlike a typical claim for healthcare benefits. After the employee files a claim, several things happen to protect the integrity of the system. For example, the employer must obtain a medical release to obtain medical records from the employee. The timing of this is entirely within the control of the worker or his or her counsel, if any. The employee must be examined by an authorized healthcare provider to determine the extent and cause of the alleged injuries. Frequently, injuries can be attributed to more than one cause, not all of which may be related to the workplace. The healthcare provider then provides a report outlining the findings. It is often necessary to subpoena witness to obtain information about the injury or other doctors to determine if the injury is in any way related to the worker's employment. None of these steps are within the total control of the employer. All these steps frequently take more than ninety (90) days.

Under the current bill, if the employer does not unequivocally accept the claim within ninety days, the claim is deemed denied, even if it is ultimately accepted, the employer's investigation is still pending, the claim is accepted in part, or the claim is accepted in its entirety. However, whether the claim is valid or not, after ninety (90) days the private carrier may seek reimbursement from the employer together with the 3% "administrative" fee on the entire charges incurred.

The bill also allows an injured worker to be reimbursed for any co-pays and out-of-pocket expenses made prior to the determination of compensability. However, as a matter of public policy in Hawaii, it is part of the broad mandate for health insurers to provide this coverage without charging the workers' compensation insurer for any fees if it is later accepted as a covered workers' compensation claim. A 3% fee based on the amount paid by the health insurer is not reasonable and should be borne by the health insurer as part of its mandate to broadly cover workers.

HB 1637 should also be clarified to ensure the workers' compensation insurer and employer are only liable for the reimbursement of reasonable and necessary medical expenses related to the covered injury. Often the claimant

receives treatment for covered and non-covered injuries from the healthcare provider.

In addition, reimbursement should be according to the applicable workers compensation reimbursement rates. Workers' compensation rates are based in part upon the number, severity and amount of the work-related injuries and claims paid on behalf of the employer. If the worker's compensation carrier is required to pay on the entirety of the injury, whether work-related or not, then this calculation will result in higher premiums being paid by the employer for the workers' compensation coverage.

As to out-of-pocket expenses, the workers compensation insurer and the employer should only be required to reimburse the injured worker for those only to the extent that the medical services were related to a covered work-related injury and not to any treatment for non-covered injuries.

Thank you for this opportunity to provide testimony.

Erin Kogen and Rosanne M. Nolan
Co-chairs, SHRM Legislative Affairs Committee

HB-1637-HD-1

Submitted on: 2/6/2024 7:07:43 PM

Testimony for CPC on 2/8/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
FRANKLIN Ichiro IZUTA	Individual	Support	Written Testimony Only

Comments:

The ability for an injured employee to receive medical care under their private insurance when a work comp claim is controverted is essential in enabling the employee to receive medical care while the claim is being investigated. Prompt and appropriate medical care improves and speeds recovery from an injury, facilitates treatment of injuries that may not be reparable if left untreated for too long, and shortens the time away from work. In controverted cases it is essential the employee be given the best chance to return to work quickly since in many instances they are not receiving any income. I have seen prolonged controverted claims have catastrophic effects on an employee and their family because of financial difficulties and the associated psychosocial ramifications associated with having to do without. This Bill will allow employees with injuries that are controverted to receive medical care so they can heal and return to work as quickly as possible to support themselves and their families.

HB-1637-HD-1

Submitted on: 2/7/2024 9:59:24 AM

Testimony for CPC on 2/8/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Cathy Wilson	Individual	Support	Written Testimony Only

Comments:

To: Labor Chair, Rep Scot Matayoshi and the House Labor Committee

The following testimony in **SUPPORT** of House Bill 1637.

HB1637 clarifies that with controverted claims, an injured employee's private health care plan must by default pay or provide medical care, services, and supplies pending acceptance of the claim or determination of compensability and may seek reimbursement from the employer if accepted or compensable. It also establishes a penalty of \$10,000 or triple the amount of medical costs incurred by the injured employee during the time the claim is under investigation, whichever is greater.

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. Therefore, the intent of this bill, to add teeth to the existing law requiring the private health insurer to treat the injured employee while the claim is pending investigation, is laudable, and **I strongly support this measure.**

Thank you,

Cathy Wilson

LATE

HB-1637-HD-1

Submitted on: 2/7/2024 9:14:07 PM

Testimony for CPC on 2/8/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Kyle Cabison	Individual	Support	Written Testimony Only

Comments:

As a primary treating provider for injured workers, I have seen the denials and delays in care that many of my patients have to deal with first hand. These underhanded maneuvers by insurance companies lengthen the amount of time my patients have to wait to receive care and only increase the amount of time they are unable to work or receive treatment. While there are many state laws to protect worker's rights, insurance companies take advantage of loopholes in the system. Ironically, if these same patients were hurt in a random accident outside of the workplace, they could receive more expedient care through their personal insurance. This is not fair to the hardworking people of Hawaii.

LATE

HB-1637-HD-1

Submitted on: 2/7/2024 9:49:12 PM

Testimony for CPC on 2/8/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Malia Keolanui	Individual	Support	Written Testimony Only

Comments:

Malia Keolanui, APRN, submits testimony in support of House Bill 1637. HB1637 clarifies that with controverted claims, an injured employee's private medical insurance must by default pay or provide medical care, services, treatment and supplies pending acceptance of the claim or determination of compensability, and may seek remibursemnt from the employer once accepted or deemed compensable. It also establishes a penalty of \$10,000 or triple the amount of medical costs incurred by the injured employee during the time the cliam is under investigation, whichever is greater.

Hawaii's existing workers' compensation has been plagued by delays and denials, leaving patients without much needed medical care or rehabilitation. Insurers often deny the claim, "pending investigation". These lengthy investigations may include reviewing reports from an independant medical examiner, interviewing other employees, combing through old medical records or reviewing video surveillance in order to prove a workplace injury was related to a pre existing condition. During this time, the patient suffers as they are unable to seek care under their private insurace, or recieve finacial compensation to sustain their income. The intent of the bill is to enforce the existing law requiring private healh insurer to provide care to the injured employee while the claim is pending investigation, is laudable, and I am in strong supprt of this measure.

LATE

HB-1637-HD-1

Submitted on: 2/7/2024 10:42:33 PM

Testimony for CPC on 2/8/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Kaohimanu L K Dang Akiona MD	Individual	Support	Written Testimony Only

Comments:

Aloha, I am a Family Physician who provides workers compensation care & support as well as primary and urgent care on Hawai'i Island and Molokai. I would like to submit the following testimony in **support** of House Bill 1637. HB1637 clarifies that with controverted claims, an injured employee's private health care plan must by default pay or provide medical care, services, and supplies pending acceptance of the claim or determination of compensability and may seek reimbursement from the employer if accepted or compensable. It also establishes a penalty of \$10,000 or triple the amount of medical costs incurred by the injured employee during the time the claim is under investigation, whichever is greater.

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. Often their care is held up and disrupted with little recourse or accountability, which often leads to complications or outcomes that could have been avoided if care was allowed to proceed in a timely fashion. The burden of this gap in care is often carried by the most vulnerable who are already struggling with minimal access to basic care. When a case is denied pending investigation, patients are not able to be seen by their primary care team because most primary insurances will also deny or delay payment stating it is likely workers compensation and not their responsibility. The patient is left, therefore, in theoretical "limbo" unable to be seen by either provider. I have provided care to many in these moments, while in limbo, and recognize most practices aren't willing or able to gamble on possible nonpayment- or extremely delayed payment- for crucial care/services needed (&rendered). Therefore, the intent of this bill, to add teeth to the existing law requiring the private health insurer to treat the injured employee while the claim is pending investigation, is laudable, and I strongly support this measure. Thank you for your consideration of this important issue and addressing a crucial gap in healthcare for our workforce.