



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

January 30, 2024

To: The Honorable Scot Z. Matayoshi, Chair,
The Honorable Andrew Takuya Garrett Vice Chair, and
Members of the House Committee on Labor & Government Operations

Date: Tuesday, January 30, 2024
Time: 9:30 a.m.
Place: Conference Room 309, State Capitol

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

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

I. OVERVIEW OF PROPOSED LEGISLATION

The **DLIR supports** this proposal. HB1637 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. Any 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 and if the employer's investigation exceeds thirty days, the private health care plan can increase the amount due by three percent and 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 thirty 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.

TESTIMONY OF MILIA LEONG

COMMITTEE ON LABOR & GOVERNMENT OPERATIONS
Representative Scot Z. Matayoshi, Chair
Representative Andrew Takuya Garrett, Vice Chair

Tuesday, January 30, 2024
9:30 a.m.

HB 1637

Chair Matayoshi, Vice Chair Garrett, and members of the Committee on Labor & Government Operations, my name is Milia Leong, Vice President of Claims and Medical Management Services for HEMIC. 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 30 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 30 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. We ask that this bill be amended to remove the 30-day investigation period, remove the 3% penalty, and clarify that the health insurer must reimburse the injured worker for out-of-pocket expenses.

Thank you for the opportunity to testify.



To: The Honorable Scot Z. Matayoshi, Chair
The Honorable Andrew Takuya Garrett, Vice Chair
House Committee on Labor and Government Operations

From: Mark Sektnan, Vice President

Re: **HB 1637 – Workers’ Compensation Law**
Position: Request for Amendments

Date: January 30, 2024 at 9:30 AM
Conference Room 309

Dear Chair Matayoshi, Vice Chair Takuya Garrett and Members of the Committee:

The American Property Casualty Insurance Association has concerns regarding HB 1637 and would request some clarifying amendments. The American Property Casualty Insurance Association (APCIA) is the primary national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA members represent all sizes, structures, and regions—protecting families, communities, and businesses in the U.S. and across the globe.

APCIA supports the basic policy of having general health provide medical coverage when a claim has been denied or contested. This ensures the injured worker receives appropriate medical care in a timely manner. APCIA also **does not oppose** reimbursing the general health insurer for medical coverage if the injury is subsequently determined to be compensable nor reimbursing the injured worker for his or her out-of-pocket expenses relating to co-pays or deductibles.

However, HB 1637 should be clarified to ensure the workers’ compensation insurer and employer is only liable to reimburse reasonable and necessary medical expenses related to the covered injury. Often the claimant receives treatment for covered and non-covered injuries and the workers compensation insurer, and the employer should only be responsible for the medical expenses relating to the covered injury and those expenses that are deemed reasonable and necessary to treat the work-related injury. In addition, reimbursement should be according to the applicable workers compensation reimbursement rates. As to out-of-pocket expenses, the workers compensation insurer and the employer should reimburse the injured worker for these but 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.

For these reasons, APCIA respectfully requests the committee to make the necessary clarifying amendments.



January 30, 2024

The Honorable Scot Z. Matayoshi, Chair
The Honorable Andrew Takuya Garrett, Vice Chair
House Committee on Labor & Government Operations

Re: HB 1637 – WORKERS' COMPENSATION LAW

Dear Chair Matayoshi, Vice Chair Garrett, and Members of the Committee:

Hawaii Medical Service Association (HMSA) appreciates the opportunity to provide comments on HB 1637, 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 efforts of the legislature to address the needs of workers who are injured or find themselves ill due to their job. There is a broad range in the severity of potential fines leveled and the penalties sections should be revisited to strike a balance between the fines against different parties and to make clear which department will be responsible for enforcement.

We respectfully request the following amendments for clarity:

1. Page 1, Lines 9-10: “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 16, “~~may~~ shall be entitled to also charge the employer an administration fee”
3. Page 2, Lines 7-10: “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.~~”

Thank you for the opportunity to testify on this measure.

Sincerely,

Dawn Kurisu
Assistant Vice President
Community and Government Relations