



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

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January 30, 2012

To: The Honorable Karl Rhoads, Chair, Kyle Yamashita, Vice Chair,
and Members of the House Committee on Labor & Public Employment

Date: Tuesday, January 31, 2012

Time: 9:00 a.m.

Place: Conference Room 309, State Capitol

From: Dwight Y. Takamine, Director
Department of Labor and Industrial Relations

**Re: H.B. 2583 Relating to Medical Benefits
Under the Workers' Compensation Law**

I. OVERVIEW OF PROPOSED LEGISLATION

H.B. 2583 amends Section 386-21(c), HRS, by allowing the Director to make a decision on disputes regarding treatment plans and continued medical services without a hearing within thirty days of the filing of a dispute between an employee and the employer or the employer's insurer. The department strongly supports this proposal as it will allow the director to better meet the thirty-day deadline in issuing treatment plan and medical decisions.

II. CURRENT LAW

When a dispute is filed regarding a proposed treatment plan or whether medical services should be continued, the director is required to make a decision within thirty days of the filing of the dispute. Section 386-86, HRS, requires a hearing be held for all decisions issued. Due to the reduction of staff as a result of budget cuts, it currently takes three to four months to schedule a treatment plan or medical services hearing, notice the parties, conduct the hearing, and render a decision.

This bill will allow the director to better meet the thirty day deadline to issue a decision without a hearing for treatment plans and discontinuance of medical services decisions.

III. COMMENTS ON HOUSE BILL

This measure will allow injured workers, insurance carriers, and employers to receive more prompt decisions as to whether medical services will continue or whether a treatment plan will be approved or denied. This measure will also reduce the number of hearings scheduled, allowing other hearings to be scheduled more quickly.

The department strongly supports this measure.



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The Twenty-Sixth Legislature, State of Hawaii
House of Representatives
Committee on Labor and Public Employment

Testimony by
Hawaii Government Employees Association
January 31, 2012

H.B. 2583 – RELATING TO
MEDICAL BENEFITS UNDER THE
WORKERS' COMPENSATION LAW

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of H.B. 2583, which amends section 386-21(c), Hawaii Revised Statutes, by requiring the Director of Labor and Industrial Relations to make a decision on disputes regarding treatment plans and continued medical services without a hearing.

The HGEA represents more than 25,000 public employees statewide and is intimately familiar with the negative impacts of staff reductions on vital public services. Staffing shortages as a result of budget cuts has delayed workers compensation hearings for disputed treatment plans or continuation of medical services process well beyond the 30-day deadline. An injured employee's medical care in workers' compensation-related cases is vital to help the injured worker return to work. The proposal fairly addresses the requirement for prompt medical care decisions for injured workers, insurance carriers and employers.

Thank you for the opportunity to testify in support of the intent of H.B. 2583.

Respectfully submitted,

Leiomalama E. Desha
Deputy Executive Director

HOUSE OF REPRESENTATIVES
THE TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2012

COMMITTEE OF LABOR & PUBLIC EMPLOYMENT

Rep. Karl Rhoads, Chair
Rep. Kyle T. Yamashita, Vice Chair

Hearing: Tuesday, January 31, 2012
Time: 9:00 a.m. – 12:00 a.m.
Place Conference Room 309

TESTIMONY OF ILWU LOCAL 142 RE: HB 2583 RELATING TO
MEDICAL BENEFITS UNDER THE WORKERS COMPENSATION LAW

Chair Rhoads, Vice Chair Yamashita, Members of the Committee:

Thank you for the opportunity to present testimony regarding HB 2583.

We are sympathetic to the Department of Labor and Industrial Relation's concerns regarding reduced staffing and its difficulties in keeping pace with its significant volume of claims with fewer administrative resources. In many instances, deciding disputes over medical care without a hearing is an efficient and appropriate method of proceeding.

However, HB 2583 may be too sweeping in requiring that all medical disputes be resolved without a hearing, as there are legitimately some cases which require more explanation and factual disputes which are not best suited to resolution through written presentations. Pro se Claimants also may not be able to express in writing the full range of their concerns, especially if they are non-English speaking or lack adequate education in written forms of communication. Direct interaction with these individuals at a face to face hearing may be the best and only way to comprehend their true situation and to protect their interest.

We therefore suggest that the following underscored language be considered, adding the phrase "provided all parties consent" so that the amended sentence in Section 1 of HB 2583 will read:

Notwithstanding section 386-86, the director shall make a decision without a hearing **provided all parties consent** within thirty days of the filing of the dispute. (new material in bold face, underscoring in original draft of HB 2583)

In this fashion, parties who wish to have an actual hearing may do so, yet the department will be able to eliminate all those hearings where the parties consent to have a decision without a hearing. In suggesting this amendment, we are also aware that

unscrupulous employers or insurance carriers may delay care by insisting on a hearing, and that the department will not be able to eliminate medical care hearings entirely. However, there are also legitimate questions of whether due process is afforded if the department proceeds to award or deny medical care without a hearing party and one has been requested by a party under both the Hawaii Administrative Procedures Act and general principles of constitutional law.

The issues and choices raised by HB 2583 are difficult ones. HB 2583 as drafted and as we have proposed amending it present specific advantages and disadvantages. Ideally, if the department were furnished additional funds, it would be able to meet the demand for medical hearings. However, we are hopeful that commentary and debate amongst all interested parties will help achieve a solution to the department's concerns that is consistent with both its own needs and the needs all its constituents.

DENNIS W. S. CHANG

ATTORNEY-AT-LAW

WORKER'S RIGHTS - LABOR LAW
WORKER'S COMPENSATION
SOCIAL SECURITY DISABILITY
LABOR UNION REPRESENTATION
EMPLOYEES RETIREMENT SYSTEM
BODILY INJURIES

January 30, 2012

SUBMITTED VIA ELECTRONIC MAIL

TO: COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
Rep. Karl Rhoads, Chair
Rep. Kyle T. Yamashita, Vice Chair
Hawaii State Capitol
415 South Beretania Street
Conference Room 309

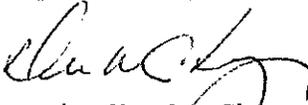
FROM: Dennis W. S. Chang, Esq.
735 Bishop Street, Suite 320
Honolulu, Hawaii 96813

RE: **Testimony in Support of HB 2583**
(Hearing: 01/31/12 at 9:00 a.m.)

Dear Honorable Chair Rhoads and Members of Committee:

I have been practicing as a labor attorney with a heavy concentration in workers' compensation cases since 1977. I ask that the Committee pass HB 2583. Currently, in light of staff reductions, budget cuts, and numerous requests for hearings, we have slowly seen an enormous backlog in scheduling hearings for treatment plan denials and continued medical services. HB 2583 will go a long way in meeting the 30-day deadline in issuing treatment plan and medical decisions by way of administrative measures. Aside from addressing vital medical care in a timely fashion, the bill will facilitate holding hearings on other vital disputes involving injured workers. For the foregoing reasons, I wholly support HB 2583.

Respectfully submitted,


Dennis W. S. Chang

DILLINGHAM TRANSPORTATION BUILDING

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**Testimony to the House Committee on Labor & Public Employment
Tuesday, January 31, 2012
9:00 a.m.
State Capitol - Conference Room 309**

**RE: HOUSE BILL NO. 2583 RELATING TO MEDICAL BENEFITS UNDER THE
WORKERS' COMPENSATION LAW**

Chair Rhoads, Vice Chair Yamashita, and members of the committee:

My name is Jim Tollefson and I am the President and CEO of The Chamber of Commerce of Hawaii ("The Chamber"). I am here to state The Chamber's opposition to House Bill No. 2583 relating to Medical Benefits Under the Workers' Compensation Law.

The Chamber is the largest business organization in Hawaii, representing more than 1,000 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 its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

Currently, when a treatment plan is submitted, the employer/carrier has just 7 days from postmark to approve or deny the proposed treatment. If the 7 day deadline is not met, the treatment plan is automatically considered approved. If the employer/carrier denies within 7 days, the injured worker/physician has 14 days to request a hearing. Most treatment plans are approved - these usually involve treatment with the attending physician, physical therapy, massage, acupuncture, chiropractic treatment, aquatherapy, etc. Generally, treatment plans are only denied if the treatment seems excessive or does not appear reasonable and necessary. While a treatment plan is disputed, current law requires continuation of treatment which the attending physician deems needed so as not to allow the injured worker's condition to deteriorate.

Allowing the Director to make a decision on disputes regarding treatment plans and continued medical services within 30 days without a hearing contravenes the parties' due process rights. There is insufficient time to obtain supporting evidence such as medical records review or evaluation particularly where the injured worker refuses to sign a medical authorization for release of records or refuses to voluntarily attend medical evaluation as is often the case. It is impossible to conduct any investigation to determine whether the proposed treatment is reasonable and necessary in such a short period of time.

According to the proposed language, the Director could make a decision within days. The Director should have the opportunity to review all evidence from injured worker/attending physician AND employer/medical expert prior to rendering a decision. The decisions made need to be informed

decisions particularly where medical treatment is concerned. This bill is expected to dramatically increase cost of medical care, services, and supplies under workers' compensation and drive up premiums.

For example, an injured worker sustained a work injury to his back in 1994. Over the years he continued to work and function although he also received medical treatment. Unfortunately, his medical treatment consisted almost entirely of increasingly large doses of narcotics. He is now a diagnosed addict. He decided he wants back surgery and found a physician willing to perform it. A medical expert opined the injured worker is not a surgical candidate because of his narcotic addiction and the surgery will not help his condition or alleviate his pain no matter how technically perfect it may be performed. The injured worker must be weaned from the narcotics first. The treatment plan for surgery was denied although employer is willing to pay for a detox program and consider future surgery if appropriate.

If this bill were passed it is entirely likely the injured worker's surgery would have been approved because employer would not have had sufficient time to investigate and obtain an expert medical opinion. This is a huge disservice to the injured worker and could leave him significantly worse off/disabled in the long run.

We urge you to take into consideration the significant unintended consequences that could occur if this bill becomes law. Thank you for the opportunity to provide testimony.

A BILL FOR AN ACT

RELATING TO MEDICAL BENEFITS UNDER THE WORKERS' COMPENSATION
LAW.

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

1 SECTION 1. Section 386-21, Hawaii Revised Statutes, is
2 amended by amending subsection (c) to read as follows:

3 "(c) The liability of the employer for medical care,
4 services, and supplies shall be limited to the charges computed
5 as set forth in this section. The director shall make
6 determinations of the charges and adopt fee schedules based upon
7 those determinations. Effective January 1, 1997, and for each
8 succeeding calendar year thereafter, the charges shall not
9 exceed one hundred ten per cent of fees prescribed in the
10 Medicare Resource Based Relative Value Scale applicable to
11 Hawaii as prepared by the United States Department of Health and
12 Human Services, except as provided in this subsection. The
13 rates or fees provided for in this section shall be adequate to
14 ensure at all times the standard of services and care intended
15 by this chapter to injured employees.

16 If the director determines that an allowance under the
17 medicare program is not reasonable or if a medical treatment,

H.B. NO. 2583

1 accommodation, product, or service existing as of June 29, 1995,
2 is not covered under the medicare program, the director, at any
3 time, may establish an additional fee schedule or schedules not
4 exceeding the prevalent charge for fees for services actually
5 received by providers of health care services, to cover charges
6 for that treatment, accommodation, product, or service. If no
7 prevalent charge for a fee for service has been established for
8 a given service or procedure, the director shall adopt a
9 reasonable rate which shall be the same for all providers of
10 health care services to be paid for that service or procedure.

11 The director shall update the schedules required by this
12 section every three years or annually, as required. The updates
13 shall be based upon:

- 14 (1) Future charges or additions prescribed in the Medicare
15 Resource Based Relative Value Scale applicable to
16 Hawaii as prepared by the United States Department of
17 Health and Human Services; or
18 (2) A statistically valid survey by the director of
19 prevalent charges for fees for services actually
20 received by providers of health care services or based
21 upon the information provided to the director by the

H.B. NO. 2583

1 appropriate state agency having access to prevalent
2 charges for medical fee information.

3 When a dispute exists between an insurer or self-insured
4 employer and a medical services provider regarding the amount of
5 a fee for medical services, the director may resolve the dispute
6 in a summary manner as the director may prescribe; provided that
7 a provider shall not charge more than the provider's private
8 patient charge for the service rendered.

9 When a dispute exists between an employee and the employer
10 or the employer's insurer regarding the proposed treatment plan
11 or whether medical services should be continued, the employee
12 shall continue to receive essential medical services prescribed
13 by the treating physician necessary to prevent deterioration of
14 the employee's condition or further injury until the director
15 issues a decision on whether the employee's medical treatment
16 should be continued. [~~The~~] Notwithstanding section 386-86, the
17 director shall make a decision without a hearing within thirty
18 days of the filing of a dispute. If the director determines
19 that medical services pursuant to the treatment plan should be
20 or should have been discontinued, the director shall designate
21 the date after which medical services for that treatment plan
22 are denied. The employer or the employer's insurer may recover

H.B. NO. 2583

1 from the employee's personal health care provider qualified
2 pursuant to section 386-27, or from any other appropriate
3 occupational or non-occupational insurer, all the sums paid for
4 medical services rendered after the date designated by the
5 director. Under no circumstances shall the employee be charged
6 for the disallowed services, unless the services were obtained
7 in violation of section 386-98. The attending physician,
8 employee, employer, or insurance carrier may request in writing
9 that the director review the denial of the treatment plan or the
10 continuation of medical services."

11 SECTION 2. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 3. This Act shall take effect upon its approval.

14

15

INTRODUCED BY:

Cabin K. Day

16

BY REQUEST

17

JAN 23 2012

18

H.B. NO. 2583

Report Title:

Workers' Compensation Medical Treatment; Decisions; Denial of

Description:

Amends section 386-21(c), Hawaii Revised Statutes, by requiring the Director of Labor and Industrial Relations to make a decision on disputes regarding treatment plans and continued medical services without a hearing.

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

AB 2583

JUSTIFICATION SHEET

DEPARTMENT: Labor and Industrial Relations

TITLE: A BILL FOR AN ACT RELATING TO MEDICAL BENEFITS UNDER THE WORKERS' COMPENSATION LAW.

PURPOSE: To allow the Director of Labor and Industrial Relations to make a decision, without a hearing, within thirty days of the filing of a dispute between an employee and the employer or the employer's insurer regarding a proposed treatment plan or whether medical services should be continued.

MEANS: Amend section 386-21(c), Hawaii Revised Statutes.

JUSTIFICATION: When a dispute is filed regarding a proposed treatment plan or whether medical services should be continued, the director is required to make a decision within thirty days of the filing of the dispute. Due to the reduction of staff as a result of budget cuts, it currently takes three to four months to schedule a hearing, notice the parties, conduct the hearing, and render a decision.

This bill will allow the director to better meet the 30-day deadline.

Impact to the public: Injured workers, insurance carriers and employers will obtain more prompt decisions as to whether medical services will continue or whether a treatment plan will be approved or denied. This amendment will also reduce the number of hearings scheduled allowing other hearings to be scheduled more quickly.

Impact on the department and other agencies:
None.

HB2583

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: LBR-183.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.