

## TESTIMONY OF ALISON POWERS

LATE

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HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT  
Representative Karl Rhoads, Chair  
Representative Kyle T. Yamashita, Vice Chair

Tuesday, March 3, 2009  
10:00 a.m.

### **SB 695, SD1**

Chair Rhoads, Vice Chair Yamashita, and members of the Committee, my name is Alison Powers, Executive Director of Hawaii Insurers Council. 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 60% of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **opposes** S.B. 695, SD1, which would require employees to receive medical benefits when the need for such treatment is being controverted.

Currently, under Hawaii Administrative Rules 12-12-45, Controverted Workers' Compensation Claims, the rule states that in a controverted claim, the prepaid health provider shall pay. S.B. 695, SD1 automatically shifts the payment to the workers' compensation insurer while the Director makes a decision, regardless of whether the injury is work related or not. The employer/insurer must also pay for benefits regardless if fraud is suspected. Currently, at the time an insurer denies a treatment request, there is evidence, usually in the form of an independent medical examination, which justifies termination. Under S.B. 695, SD1, the employer/insurer must continue to pay without reimbursement until a decision and notification is made. The employer should be allowed to deny a treatment request when there is medical evidence to substantiate the

denial. The current procedure ensures due process by allowing the employee or the provider to request a hearing.

S.B. 695, SD1 prohibits any recovery by the employer/insurer until after the Director issues a decision and notification. The Director has 30 days to make a decision, therefore, this bill merely guarantees another 30 days of treatment to the employee and payment to the provider. It provides an incentive to the employee and provider to continue treatment, whether necessary or not. S.B. 695, SD1 will encourage treatment abuse by providers that have a tendency to utilize treatment modalities not reimbursable under workers' compensation or other medical benefit plans. Such treatment that is challenged by the employer or the employer's insurer may include unconventional, experimental, or non-FDA approved pharmaceutical regimes. This is not beneficial to the injured worker and would also expand the degree of risk the employer has to bear in the event there are adverse consequences as a result of the controverted treatment. We believe this bill will encourage employees without health insurance to file claims for illnesses, disease, and injuries that are clearly not work related. The employer will be financially responsible for treatment of such conditions while the claim is controverted. This bill expands benefits way beyond the scope and intent of the Workers' Compensation statute and creates a moral hazard. Furthermore, the bill does not have any provision in the event the decision is not made within the 30 days. If he does not make a decision within the timeframe, it appears that the employer/insurer still must continue to pay medical benefits.

Although the bill allows the employer or the employer's insurer to recover from the employee's personal health care provider for medical services rendered after the date designated by the Director, the treatment rendered may not be reimbursable. If reimbursable, it may be at a different rate. This provision places an unfair financial burden on employers by requiring them to bear the cost for treatment that is outside the scope of workers' compensation benefits. If the treatment is deemed unnecessary by the health insurer, the workers' compensation insurer must bear the cost of treatment

that is *outside even health insurance benefits*. This provision will also add cost to the adjudication of the claim when the employer/insurer has to subrogate other entities for payment.

Finally, there will be an increase in medical expenses under workers' compensation insurance because of the automatic 30-day extension of benefits. These costs will be passed on to businesses and consumers in the form of rate increases. In their analysis dated February 29, 2008 of the same bill from last year (HB 2388), The National Council on Compensation Insurance (NCCI) stated in part:

“...Specifically, the Hawaii Department of Labor and Industrial Relations WC Data Book for 2005 reports 39,889 WC cases with some payment, and a total of 10,135 decisions issued. Of these, 5947 involve a dispute that could impact medical compensation. If 30% to 50% of the decisions include a medical component, then 3,000 to 5,000 cases with disputes over medical care could have a month of additional covered treatment while waiting for a decision. The treatment would likely be of a palliative nature, to comply with the charge to prevent deterioration. **Assuming the cost for a month of treatment, including medication for pain, inflammation or other injury related problems, could range between \$290 and \$1790, the additional medical costs might be \$0.9 Million to \$9.1 Million. This is a range of 0.5% to 3.9% of Hawaii's WC medical costs. Medical costs represent 43.8% of Hawaii's total WC costs, resulting in a possible impact from between 0.2% and 1.7% of overall WC system costs.**”

For these reasons, we respectfully request that S.B. 695, SD1 be held.

Thank you for the opportunity to testify.

Testimony to the House Committee on Labor  
Tues., March 3, 2009 10:00 a.m.  
Conference Room 309

Re: Senate Bill 695 SD1 Relating to Workers' Compensation

Chair Rhoads, Vice Chair Yamashita and committee members:

I am Carolyn Fujioka on behalf of State Farm Insurance Companies, a mutual company owned by its policyholders. **State Farm opposes SB 695 SD1.**

This measure requires employers to continue paying for medical services to an injured employee until the director of labor and industrial relations makes a decision on the case, even though the need for continued treatment may be disputed.

State Farm believes that this provision will increase the costs of workers compensation coverage and may lead to abuses through the continuation of treatment that is unreasonable and unnecessary. Employers will pay for delays in administrative hearings that are unavoidable and beyond their control.

Particularly at a time when many business owners are struggling to keep workers employed and their businesses alive, we urge you not to pass this bill that will increase employers' operating costs.

Thank you for the opportunity to testify.

**yamashita1- Kathy**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, March 03, 2009 9:24 AM  
**To:** LABtestimony  
**Cc:** tim.forkner@dhx.com  
**Subject:** Testimony for SB695 on 3/3/2009 10:00:00 AM

**LATE**

Testimony for LAB 3/3/2009 10:00:00 AM SB695

Conference room: 309  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: Tim Forkner  
Organization: Dependable Hawaiian Express  
Address: 475 Hukilike Street Kahului, Maui, Hi  
Phone: 808-877-2822  
E-mail: [tim.forkner@dhx.com](mailto:tim.forkner@dhx.com)  
Submitted on: 3/3/2009

Comments:

**yamashita1- Kathy**

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**From:** gkagawa@askoxy.com  
**Sent:** Tuesday, March 03, 2009 8:39 AM  
**To:** LABtestimony  
**Subject:** SB 62 and 695

**LATE**

Testimony to the House Labor & Public Employment Committee Tuesday, March 3 10:00 a.m. in Room 309

RE: SB 62 and SB 695 re Workers' Compensation

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

I am Gordon Kagawa, President of Occidental Underwriters of Hawaii a locally owned insurance agency. My contact information by email is [gkagawa@askoxy.com](mailto:gkagawa@askoxy.com). I respectfully request that you do not pass SB 62 SD1 and SB 695 SD1, both relating to Workers' Compensation.

SB 62 SD1 measure requires independent medical examinations and Permanent Impairment Rating Examinations to be performed by mutually agreed upon physicians.

I believe that it is inherently unfair to allow one party to choose both the treating physician and the IME physician who will review the treating physician's plan. Therefore, to balance the equation, the employer should have the right to select a physician to conduct the IME. Furthermore, it is the employer who pays for 100% of the cost of the IME physician and it is part of our discovery process to ensure proper treatment and that the costs are justified.

SB 695 SD1 requires the employer to continue medical services to an injured employee despite disputes over whether treatment should be continued. This measure may lead to abuse and cause unreasonable and unnecessary treatment for non-related work injuries, and prolong time off the job, even if the employee is deemed able to return to his or her work. I believe there are adequate safeguards within the statute and current practices to make sure that injured employees receive appropriate medical care. Businesses such as mine make every effort and go above and beyond to ensure a safe working environment for our employees.

It is unfair to pass legislation that heavily tips in favor for one party and not the other. Furthermore, this is not the time to pass legislation that will further increase costs. If businesses hurt, jobs will be lost, and the economy will continue to spiral down.

These measures, if passed, will increase the cost of workers' compensation premiums and the overall cost of doing business. Thus, I respectfully ask that you hold this measure.

Thank you for the opportunity to submit testimony.

**yamashita1- Kathy**

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**From:** info@gonorthshore.org  
**Sent:** Tuesday, March 03, 2009 9:45 AM  
**To:** LABtestimony  
**Subject:** Take Action Now

**LATE**

Antya Miller, Executive Director  
North Shore Chamber of Commerce  
66-434 Kamehameha Hwy.  
PO Box 878  
Haleiwa, HI 96712  
Phone: 637-4558/342-8557

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Thank you for the opportunity to submit testimony.

Sincerely,  
Antya Miller

**yamashita1- Kathy**

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**From:** DADSINC001@hawaii.rr.com  
**Sent:** Tuesday, March 03, 2009 9:48 AM  
**To:** LABtestimony  
**Subject:** Take Action Now

**LATE**

David Yamamoto  
98-025 Hekaha Street, #22  
Aiea, HI 96701-4904

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