

LINDA LINGLE
GOVERNOR OF HAWAII



HB 2637

MARIE C. LADERTA
DIRECTOR

CINDY S. INOUE
DEPUTY DIRECTOR

**STATE OF HAWAII
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
235 S. BERETANIA STREET
HONOLULU, HAWAII 96813-2437**

February 8, 2010

TESTIMONY TO THE
HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
For Hearing on Monday, February 8, 2010
2:00 p.m., Conference Room 325

BY

MARIE C. LADERTA, DIRECTOR

**House Bill No. 2637
Relating to Medical and Rehabilitation Benefits**

(WRITTEN TESTIMONY)

TO CHAIRPERSON ROBERT N. HERKES AND MEMBERS OF THE COMMITTEE:

The purpose of H.B. No. 2637 is to clarify that a physician or surgeon may conduct diagnostic testing or engage in a one-time consult for a subspecialty diagnostic evaluation and treatment recommendations from a board certified or licensed specialist.

The Department of Human Resources Development is strongly opposed to this bill as it deprives the self insured employer or insurance carrier of a fundamental right to challenge the referral on the basis of it not being reasonable or necessary or for a condition that is unrelated to the industrial injury.

This bill will likely add to the current adversarial nature of the system and increase costs by removing one of the checks and balances currently afforded employers and insurance carriers.



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

830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813
www.hawaii.gov/labor
Phone: (808) 586-8842 / Fax: (808) 586-9099
Email: dliir.director@hawaii.gov

February 5, 2010

To: The Honorable Robert N. Herkes, Chair
and Members of the House Committee on Consumer Protection & Commerce

Date: February 5, 2010
Time: 2:00 p.m.
Place: Conference Room 309, State Capitol

From: Darwin L.D. Ching, Director
Department of Labor and Industrial Relations

Testimony in OPPOSITION

to

H.B. 2637 – Relating to Medical and Rehabilitation Benefits

I. OVERVIEW OF CURRENT PROPOSED LEGISLATION

House Bill 2637 proposes to amend Section 386-21(b), HRS, by clarifying that a physician or surgeon may conduct diagnostic testing or engage in a one-time consultation for a subspecialty diagnostic evaluation and treatment recommendations from a board certified or licensed specialist, without prior approval from the insurer or employer.

II. CURRENT LAW

The current law allows an injured employee to select any physician or surgeon who is practicing on the island where the injury was incurred to render medical care. The current Workers' Compensation Medical Fee Schedule Administrative Rules (WCMFS) allows for Consultations under Section 12-15-42 when additional medical opinions and treatment is warranted.

Under Section 12-15-42, WCMFS, Consultations may be requested by the attending physician, the injured employee, the employer, or the director whenever another physician with expertise and experience on the subject may be required. Consultation referrals must be authorized by the employer/insurance carrier (hereafter "employer") or granted upon order of the director. The employer, upon receipt of a consultation request, shall respond within seven calendar days after postmark of such request, giving

authorization or stating in writing the reason for refusal to the attending physician, the injured employee, and the director. If the employer denies the consult, the attending physician or the injured employee may request the director to review the employer's denial and a hearing will be held to approve or deny the request for consultation based on the evidence presented.

III. HOUSE BILL

The Department of Labor and Industrial Relations (Department) believes its administrative rules that allow for consultations are fair and adequate. Currently, the attending physician usually refers the injured worker for diagnostic testing and consultations when they feel it is reasonable and necessary as the injury requires. And because not all workers' compensation injuries are so severe and complex to require diagnostic testing and consultations, the Department does not feel that "a blanket approval" for diagnostic testing and a one-time consult should be allowed. Each case should be determined on a case by case basis which the current administrative rules provide. The Department, therefore, opposes the proposed amendment for the reasons cited above.



HAWAII MEDICAL ASSOCIATION

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

Monday, February 8, 2010, 2:00 P.M., Conference Room 325

To: COMMITTEE ON CONSUMER PROTECTION & COMMERCE
Rep. Robert N. Herkes, Chair
Rep. Glenn Wakai, Vice Chair

From: Hawaii Medical Association
Gary A. Okamoto, MD, Legislative Co-Chair
Linda Rasmussen, MD, Legislative Co-Chair
April Donahue, Executive Director
Lauren Zirbel, Government Affairs
Dick Botti, Government Affairs

Re: HB2637 RELATING TO MEDICAL AND REHABILITATION BENEFITS

In Support

Chairs & Committee Members:

Hawaii Medical Association supports HB 2637 Relating Medical and Rehabilitation Benefits as a measure to help expedite care for injured workers and avoid long delays with denials that may have no basis in medical need.

Thank you for the opportunity to testify.

OFFICERS

President - Robert Marvit, MD President-Elect - Morris Mitsunaga, MD Secretary - Thomas Kosasa, MD
Immediate Past President - Gary Okamoto, MD Treasurer - Stephen Kemble, MD Executive Director - April Donahue

TESTIMONY OF ALISON POWERS

HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
Representative Robert N. Herkes, Chair
Representative Glenn Wakai, Vice Chair

Monday, February 8, 2010
2:00 p.m.

H.B. 2637

Chair Herkes, Vice-Chair Wakai, 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 45% of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **supports** H.B. 2637, **with amendments**. This bill would allow a physician or surgeon to conduct diagnostic testing or engage in a one-time consultation for a subspecialty diagnostic evaluation and treatment recommendations that shall not be subject to contest by an insurer or employer.

Hawaii Insurers Council does not object, provided that the referral is within occupational medical guidelines and the physician or surgeon has no financial interest in the diagnostic testing, the subspecialty diagnostic evaluator's practice or in the licensed specialist's practice. We believe that if such language is not inserted, this could lead to a potential abuse of the system.

Hawaii Insurers Council proposes the following amendment:

"The physician or surgeon may conduct diagnostic testing or engage in a one-time consultation for a subspecialty diagnostic evaluation and

treatment recommendations from a board certified or licensed specialist, ***provided the referral is within occupational medical guidelines and the referring physician or surgeon has no financial interest in conducting the diagnostic testing, no financial interest in the subspecialty diagnostic evaluator's practice, or no financial interest in the licensed specialist's practice***; and the request for or provision of such diagnostic services shall not be subject to contest by an insurer or employer."

Thank you for the opportunity to testify.

HOUSE OF REPRESENTATIVES
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2010

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Rep. Robert N. Herkes, Chair

Rep. Glenn Wakai, Vice Chair

Hearing: Monday, February 8, 2010

Time: 2:00 p.m.

Place: Room 325, State Capitol

TESTIMONY OF ILWU LOCAL 142 RE:
HB 2637 RELATING TO: MEDICAL AND REHABILITATION BENEFITS

Chair Herkes, Vice Chair Wakai, Members of the Committee:

Thank you for the opportunity to present testimony regarding HB 2637. We support this simple but constructive proposal.

The ability to render prompt medical services is a critical component of any effective workers' compensation system. HB 2637 amends Section 386-21 HRS by giving treating physicians the prerogative to engage in diagnostic testing or to make a referral to a single subspecialty consultation for evaluation and treatment without following the conventional medical treatment plan procedures.

Affording treating physicians this single tool will measurably enhance their ability to make a prompt diagnosis and accelerate the recovery of injured workers. Where diagnostic testing or referral to a sub-specialist is necessary, there is no sound reason to defer such action because the more rapidly clinicians reach an accurate diagnosis of an injury or illness and the more promptly sub-specialty care is commenced, the more rapidly the injured worker will recover and resume gainful employment. In this fashion, the ultimate expense and duration of disability will be minimized, and the employee and employer will enjoy the benefit of being restored to good health at the earliest feasible date.

It should also be noted that HB 2637 does not in any way sacrifice an Employer's right to contest or deny a claim. However, where a claim is eventually deemed non-compensable after it has been adjudicated, all parties will still benefit by the adoption of HB 2637. As a practical matter, when an employee who works more than half-time is injured, she will have regular medical coverage for at least three months after the month in which the industrial accident occurred because continuation of such coverage by the employer is mandated by the Hawaii Prepaid Health Insurance Act. Thus, if a physician undertakes diagnostic testing or a referral to sub-specialty care when the injury originally occurs and the claim is later denied, regular health care coverage will still be in place to absorb these expenses during this initial three month period. But rather than being

embroiled in a dispute over compensation that delays medical care, essential diagnostic testing and sub-specialty referral will have taken place and such timely intervention is beneficial to all interested parties.

Concern was expressed in the Committee on Labor and Public Employment that some physicians may have a pecuniary interest in referral to diagnostic testing that requires restraint. While this is an understandable concern, Hawaii's physicians are on the whole an ethical group so this issue should not be a significant economic factor. Where blatantly false request for diagnostic testing are submitted, they can be addressed through complaints for fraud under Section 386-98 HRS. The isolated threat of financial self-dealing is thus not of sufficient weight to overcome the positive impact of HB 2637.

Thoughtful participants in the workers' compensation process should therefore unanimously embrace this bill, and ILWU Local 142 enthusiastically supports its passage.



HAWAII INJURED WORKERS ALLIANCE
715 SOUTH KING STREET SUITE #410
HONOLULU, HAWAII 96813

February 8, 2010

The Twenty-Fifth Legislature, State of Hawaii
Regular Session 2010
House of Representatives
Committee on Consumer Protection and Commerce

H.B. 2637 clarifies that a physicians or surgeon may conduct diagnostic testing or engages in a one-time consultation for subspecialty diagnostic evaluation and treatment recommendations from a board certified or licensed specialist.

The Hawaii Injured Workers Alliance strongly supports this measure.

The ability to move quickly and accurately to resolve an injury is foremost in the mind of doctors. By giving doctors this one-time consultation would help bring about faster resolution of the injury.

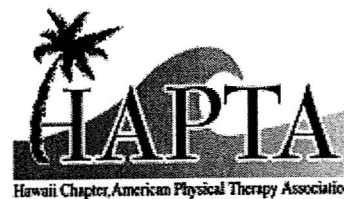
We believe this bill will bring about a faster resolution to claimant injury.

We agree this is a positive step for injured workers in the State of Hawaii.

Your passage of this bill would be greatly appreciated.

George M. Waialeale
Executive Director
Hawaii Injured Workers Alliance
383-0436

Testimony by: Derrick Ishihara, PT
HB 2367, Relating to Medical and Rehabilitation Benefits
Hse CPC, Mon. February 8, 2010
Room 325, 2:00 pm Position: Support



Chair Herkes and Members of the Hse CPC Committee:

I am Derrick Ishihara, P.T., Legislative Committee member of the Hawaii Chapter – American Physical Therapy Association (HAPTA) and small business owner of a private practice clinic. HAPTA represents 250-300 physical therapists and physical therapist assistants employed in hospitals, nursing homes, the Armed Forces, the Department of Education and Department of Health (DOH) systems, and private clinics throughout our community. Physical therapists work with everyone, from infants to the elderly, to restore and improve function and quality of life. We are part of the spectrum of care for Hawaii, and provide rehabilitative services for infants and children, youth, adults and the elderly. Rehabilitative services are a vital part of restoring optimum function from neuromusculoskeletal injuries and impairments.

We support this measure because it will expedite care to the injured employee. The hearings process is very drawn out when the insurance carrier challenges the request for surgical or other sub-specialist consult.

We also propose amending the language to ensure that if more than one sub-specialty provider is needed for evaluation of a severe, multi-system injury, each sub-specialist is allowed to evaluate and obtain necessary testing without prior authorization of the insurance carrier.

Paying for the consult fee, in the short run, may be less expensive than challenging the case and the long drawn out process to settle the case. Ultimately, it will benefit the injured worker's rehabilitation and return to work.

I can be reached at 593-2610 if you have any questions. Thank you for the opportunity to testify.