

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

COMMITTEE ON FINANCE

Rep. Marcus Oshiro , Chair  
Rep. Marilyn B. Lee, Vice Chair

Hearing: Monday, February 22, 2010

Time: 1:00 p.m.

Place: Room 308, State Capitol

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

Chair Oshiro, Vice Chair Lee, 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. Moreover, we note the Hawaii Medical Association—a preeminent group of medical providers, has formally supported this bill as a means “to expedite care for injured workers and avoid long delays with denials that may have no basis in medical need.” (February 8, 2010 testimony before the Committee on Consumer Protection and Commerce)

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 both in the Committee on Labor and Public Employment and the Committee on Consumer Protection & Commerce 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.

## TESTIMONY OF ALISON POWERS

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HOUSE COMMITTEE ON FINANCE  
Representative Marcus R. Oshiro, Chair  
Representative Marilyn B. Lee, Vice Chair

Monday, February 22, 2010  
1:00 p.m.

### H.B. 2637

Chair Oshiro, Vice Chair Lee, 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 **opposes** H.B. 2637. 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.

This bill was heard in two prior committees where we supported it with amendments. The amendments we requested were to disallow a referral if it is outside occupational medical guidelines and there is a financial interest between the physician or surgeon and the diagnostic testing, the subspecialty diagnostic evaluator's practice, or in the licensed specialist's practice. However, since the bill has remained in its original form through both committees, we oppose it.

H.B. 2637 will likely add costs to the workers' compensation system if there is increased abuse in this area. There may be situations where there is a financial interest between the physician and a diagnostic testing facility and collusion could occur. There could

also be referrals made for injuries unrelated to the work injury which would also add costs if the employer ultimately has to pay for this referral.

We respectfully request that H.B. 2637 be held.

Thank you for the opportunity to testify.



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

February 22, 2010

The Twenty-Fifth Legislature, State of Hawaii  
Regular Session 2010  
House of Representatives  
Committee on Finance  
1:00 p.m. Conference Room # 308

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 with the exception of standing committee report number 79-10.

It is our opinion this report will restrict doctors from using in house referrals. This would be very detrimental to injured workers who are being treated at Straub, Kaiser, Honolulu Medical Group and other group practices.

We believe the no financial interest clause can be resolved by administrative rules at the State Department of Labor.

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 with modifications 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 Waialeale  
Executive Director  
Hawaii Injured Workers Alliance



Testimony by: Derrick Ishihara, PT  
HB 2637, Relating to Medical and Rehabilitation Benefits  
Hse FIN, Mon. February 22, 2010  
Room 308, 1:00 pm Position: Support

Chair Oshiro and Members of the Hse FIN 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.

# TESTIMONY

Date: January 28, 2010

To: Committee on Finance, Chairman Marcus Oshiro

From: Scott McCaffrey, MD

Re: House Bill 2637 Relating to Medical and Rehabilitation Benefits "The Diagnosis Expediency Act of 2010"

Honorable Chair and Members of the Finance Committee:

My name is Scott McCaffrey and I serve as Chief of Staff of the Hawaii Medical Center-West. However, today I come to you as a member of the Board of Advisors of the Hawaii Injured Workers' Alliance and as spokesperson for the 400+ member **Hawaii Coalition for Health**. My specialty is Emergency, Occupational and Rehabilitative Medicine and I have been actively caring for Hawaii's injured for over 20 years.

I urge you to support the measure before you today and any other bills this session that impact patient access to care and our island's physicians' ability to practice the skills they have been trained so thoroughly to provide. It should also be noted as a matter of medical record that medico-legal conflict and care micromanagement are two of the major reasons many of our state's doctors refuse involvement in WC care.

The ability to quickly diagnose injury and illness should be an incontrovertible right of all licensed physicians in all specialties treating all patients covered by any insurance. However, in Hawaii that ability is often delayed by insurers who seek to undermine the treating doctors' investigative efforts and the path to the medical truth.

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Tactics such as “denial pending investigation”, “denial pending IME” and sometimes simply silence and non-response to formal letter and telephone requests serve to inhibit short term costs pushing them into the future along with the patients chances for expedient recovery through targeted therapies.

Without the results of today’s marvelous imaging and bioassay technologies the treating physician has little choice but to use more generalized interventions with sometimes less than impressive outcomes.

Likewise, by delaying patient access to sub specialist, frontline PCP’s are left with surgical and neurological questions they cannot answer leaving the patient in a state of limbo in participating the their own care decision making and recovery.

To those opposed to this measure claiming the thread worn argument that this bill will “increase the cost of care and drive premiums upward” please ask the following questions:

- How can early, accurate discovery of an injury’s etiology increase the cost of care?
- How can early, accurate diagnosis of a patient’s disorder increase the amount of case lost time?
- And the converse of course: In what way does delaying such important information gathering not add to both care costs and time lost?
- Finally, how could denying and delaying such essential medical investigation effort not contribute to an injured worker stress and compel him/her to obtain an attorney?

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Regarding the amendment restricting physician choice in obtaining diagnostic studies and subspecialty input, such a modification is unnecessary and probably deleterious for the following reasons:

- 1). The subtext that doctors will/are abusing the system by referring to their own group or entity has no foundation in fact locally.
- 2). Such restriction will prohibit and inhibit Straub doctors, Kaiser doctors, Honolulu Med. Group doctors or any other group practice from in house referral using trusted specialist and proven diagnostic equipment not restricted otherwise by any insurances or other insurers. If exclusion is made for group practices, imposing this "standard" would be unfair and discriminatory of solo practitioners and their usual and customary ways of working the patient up.
- 3). In a state losing key WC specialists (i.e. orthopedists, neurologist, occupational medicine, neurosurgeons), such an amended restriction could undermine existing practices economically causing further physician exodus and refusal to treat thereby exacerbating the access-to-care problems this bill is attempting to correct by making the system more doctor friendly.

Most importantly, passing the measure before you send a message to both treating physician and injured worker that both will be better protected and cared for by safety net the Hawaii Workers Compensation System was designed to be.

Mahalo nui loa,

Scott McCaffrey, MD  
Emergency, Occupational and Rehabilitative Medicine

Testifying on behalf of The Hawaii Coalition for Health