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

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February 2, 2010

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

Date: February 2, 2010
Time: 9:00 a.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

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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.