



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

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March 16, 2010

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

Date: Wednesday, March 17, 2010
Time: 2:00 p.m.
Place: Conference Room 325, State Capitol

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

Testimony in OPPOSITION

to

S.B. 2566 H.D. 1 – Relating to Medical and Rehabilitation Benefits

I. DEPARTMENT POSITION

The Department opposes the amendment because its current administrative rules that allow for consultations are fair and adequate and because the provision to allow consults to be done in a facility regardless of the physician or surgeon having a financial interest in that facility may result in conflicts of interest. 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 also believes that allowing the one-time consultation to be done in a medical facility in which the physician or surgeon has a financial interest may lead to conflicts of interest that will increase the number of consults regardless of their necessity, resulting in higher workers' compensation costs.

II. OVERVIEW OF CURRENT PROPOSED LEGISLATION

Senate Bill 2566 H.D. 1 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 denial from the insurer or employer. This proposal also allows the one-time consultation to be made at a medical facility in which the physician or surgeon has a financial interest.

III. 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.

The current law does not address referrals to a medical facility in which the physician or surgeon has a financial interest.



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

March 15, 2010

TESTIMONY TO THE
HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
For Hearing on Wednesday, March 17, 2010
2:00 p.m., Conference Room 325

BY

MARIE C. LADERTA, DIRECTOR

**Senate Bill No. 2566, H.D. 1
Relating to Medical and Rehabilitation Benefits**

(WRITTEN TESTIMONY)

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

The purpose of S.B. No. 2566, H.D. 1, 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.



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Alison Powers
Executive Director

TESTIMONY OF ALISON POWERS

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

Wednesday, March 17, 2010
2:00 p.m.

S.B. 2566, H.D. 1

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 **opposes** S.B. 2566, H.D. 1. 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. It further allows the one-time consultation to be made regardless of whether or not the physician or surgeon has a financial interest.

S.B. 2566, H.D. 1 will likely add costs to the workers' compensation system if there is increased abuse in this area. Collusion could occur especially if there is a financial interest between the physician and a diagnostic testing facility. 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 S.B. 2566, H.D. 1 be held.

Thank you for the opportunity to testify.



**Property Casualty Insurers
Association of America**

Shaping the Future of American Insurance

1415 L Street, Suite 670, Sacramento, CA 95814-3972

To: The Honorable Robert N. Herkes, Chair
House Consumer Protection & Commerce Committee

From: Samuel Sorich, Vice President

Re: **SB 2566 HD1 – RELATING TO MEDICAL AND REHABILITATION BENEFITS**
PCI Position: Opposed

Date: Wednesday, March 17, 2010
2:00 p.m.; Conference Room 325

Aloha Chairman Herkes and Committee Members:

The Property Casualty Insurers Association of American (PCI) is opposed to SB 2566 HD1 which would allow a physician or surgeon to conduct diagnostic testing or engage in a one-time consultation for a subspecialty diagnostic evaluation and make treatment recommendations that could not be contested by an insurer or employer.

Insurer representatives were initially supportive of SB 2566 HD1 provided this measure included some fairly straightforward amendments to prevent potential abuse of this new right and to protect injured workers. The proposed amendments provided that the referral had to be within the occupational medical guidelines. The occupational medical guidelines are designed to ensure optimal treatment for the patient along with ensuring their safety. In addition, insurers requested amendments to ensure that the physician or surgeon had no financial interest in the diagnostic testing, the subspecialty diagnostic evaluator's practice or in the licensed specialist's practice. Any issues caused by a possible delay in going to another physician or surgeon without a financial interest in the diagnostic testing is clearly out weighted by the threat of financial kickbacks and unnecessary testing. Unnecessary testing which has the potential to merely increase revenue is both costly to the system and potentially dangerous to the patient. These amendments have not been adopted so PCI is forced to oppose SB 2566 HD1.

PCI also supports the Department of Labor and Industrial Relations Department's belief that the existing administrative rules that allow for consultations are fair and adequate and that there is no need for a non-contestable "blanket rule" allowing for diagnostic testing and a one-time consultation.

Making the decision non-contestable, without including important safeguards, would eliminate the right of the insurer to challenge the referral on any basis including the belief that the test and consultation were not reasonable or were for a condition not related to an industrial injury. Such actions would merely serve to increase the cost of workers' compensation insurance without any benefit to the injured worker. For these reasons, PCI must respectfully oppose SB 2566 HD1.



HAWAII MEDICAL ASSOCIATION

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

Wednesday, March 17, 2010, 2:00 pm, 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: SB2566 RELATING TO MEDICAL AND REHABILITATION BENEFITS

In Support

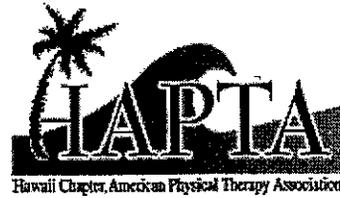
Chairs & Committee Members:

Hawaii Medical Association supports SB2566 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 by: Derrick Ishihara, PT

SB 2566,hd1 Relating to Medical and Rehabilitation Benefits

Hse CPC, Wednesday, March 17, 2010

Room 325, 2:00 pm

Position: Support, With Suggested Amendment

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 surgical consult. This lengthy process means that the injured worker does not receive timely treatment and is not able to return to work. The long delay may cause permanent damage of an injury such as nerve damage on a lumbar or cervical radiculopathy. Or, such delay may make a repair more difficult with a poor outcome for the injured worker as in the case of rotator cuff rehabilitation.

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.



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

March 7, 2010

The Twenty-Fifth Legislature, State of Hawaii
Regular Session 2010
The House of Representatives
Committee on Labor and Public Employment

S.B. 2566 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 a faster resolution of the injury.

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

We are concerned about referring physician financial interest guidelines. Our concern is in hospital such as Kaiser, Straub, Hawaii Medical Center and others they may not be able to refer patients to an in house doctor because as a group of doctors they have a financial interest in there hospital.

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