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**LATE TESTIMONY**  
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The Twenty-Sixth Legislature, State of Hawaii  
House of Representatives  
Committee on Economic Revitalization & Business

Testimony by  
Hawaii Government Employees Association  
March 20, 2012

S.B. 2845, S.D. 1, H.D. 1 - RELATING TO  
MEDICAL BENEFITS UNDER  
THE WORKERS' COMPENSATION LAW

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of S.B. 2845, S.D. 1, H.D. 1, which allows the director of labor and industrial relations to make a decision on disputes regarding treatment plans and continued medical services without a hearing but requires a decision within 30 days of the filing of a dispute.

The HGEA represents more than 25,000 public employees statewide and is intimately familiar with the negative impacts of staff reductions on vital public services. Staffing shortages as a result of budget cuts have delayed workers compensation hearings for disputed treatment plans or continuation of medical services process well beyond the 30-day deadline. An injured employee's medical care in workers' compensation-related cases is vital to help the injured worker return to work. The proposal addresses the requirement for prompt medical care decisions for injured workers, insurance carriers and employers.

Thank you for the opportunity to testify in support of the intent of S.B. 2845, S.D.1, H.D.1

Respectfully submitted,

Leiomalama E. Desha  
Deputy Executive Director

# DENNIS W. S. CHANG

ATTORNEY-AT-LAW

WORKER'S RIGHTS - LABOR LAW  
WORKER'S COMPENSATION  
SOCIAL SECURITY DISABILITY  
LABOR UNION REPRESENTATION  
EMPLOYEES RETIREMENT SYSTEM  
BODILY INJURIES

## LATE TESTIMONY

VIA ELECTRONIC MAIL

March 19, 2012

To: The Honorable Angus L.K. McKelvey, Chair; Issac W. Choy, Vice Chair; and  
Members of the House Committee on Economic Revitalization & Business

Date: Tuesday, March 20, 2012

Time: 8:30 a.m.

Place: Conference Room 312, State Capitol

From: Dennis W. S. Chang  
Labor and Workers' Compensation Attorney

### **Re: Strong Support of SB 2845, SD1, HD1 Relating to Medical Benefits Under the Workers' Compensation Law**

#### **Purpose:**

SB 2845 SD1, HD1 amends Section 386-21(c), HRS, and allows the Director of Labor and Industrial Relations (Director) to make a prompt decision on disputes regarding treatment plans and continued medical services without a hearing. The decision currently must be rendered within thirty (30) days of the filing of a dispute between an employee and the employer or the employer's insurer. This bill slightly changes the process by allowing the Director to issue a decision without a hearing when appropriate to meet the thirty (30) day deadline in resolving disputes over treatment plans.

#### **Justification for Bill:**

This bill is intended to address Act 695 requiring hearings as a priority over the denial of treatment plans while medical providers in certain instances continued to provide medical services and get paid. However, budget shortfalls and vacancies have made it impossible for the Director to comply with the law by holding hearings promptly and rendering decisions within thirty (30) days. Allowing him to render administrative decisions would help enormously and hopefully, free him to hold hearings on other just as notable disputed issues such as the compensability of a claim, refusal to pay or termination of wage loss benefits, and an injured workers' permanent partial disability award.

#### **Suggestion:**

Treatment plans are required every one hundred twenty (120) days after initial treatment. The defense industry, in particular, attorneys, have developed a cottage industry in going over each section of the treatment plan to look for technical errors to justify a denial of

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the plan. A resounding message should be sent to everyone that medical providers must complete the treatment plans to the fullest extent possible and the defense industry can no longer go through the checklist of what must be completed in the Medical Fee Schedule to justify a denial. I would urge the Director to consider amending the current bill to state that "substantial compliance" in preparing a treatment plan is sufficient.

For example, the defense does not accept four (4) months as indicative of compliance with a treatment plan but instead insists on requiring medical providers to identify precisely one hundred twenty (120) days as the start and ending dates for a plan. Or, even when it is clear that treatment plans should be approved, the defense would deny the plans by stating there is no justification. As an apt illustration, consider an injured worker who has just had surgery in the form of a fusion and routine monitoring is required and a second round of physical therapy is essential. Nevertheless, the defense industry, usually through their attorneys, examine each element of a treatment plan and state it is deficient for failing to point out the obvious that physical therapy is still required during the start of the fifth month of recovery. The list goes on. In this regard, I have attached a sample of a treatment plan, which I prepared back in 2006 to assist physicians from the laborious work involved in the submission of treatment plans. If any one (1) section is not completed, there is an excellent likelihood of a denial prompting a request for a hearing and endless needless litigation. For yet another illustration, consider an injured worker who has been in a full leg cast for over six (6) months. He/she will have clear loss of mobility and adhesions which would prevent a proper gait following the removal of the cast. In this situation, the failure to complete all elements contained in the treatment plan would result in a denial. Why is this proper?

It should be no surprise to everyone that prioritizing hearings for the denial of treatment plans has resulted in causing a major backlog at the Disability Compensation Division since certain attorneys working for the defense have fine tuned justifications for the denying of treatment plans even though privately they admit that medical services are critically needed. Thus, a test of "substantial compliance" or, more appropriately, common sense in the review of denials should be seriously considered as an amendment in the bill.

**Conclusion:**

We should be standing up for injured workers consistent with the underlying policy of the workers' compensation statute. I thank you for your consideration in wholeheartedly supporting the passage of SB 2845, SD1, HD1.

DWSC:ty

Enclosure: Sample short version  
of treatment plan

, M.D.  
 The Queen's Physician's Office Building II  
 1329 Lusitana Street, Suite 1  
 Honolulu, Hawaii 96813  
 Phone: (808) 522  
 Facsimile: (808) 536

**Worker's Compensation Treatment Plan**

Pursuant to Section 12-15-32 of the Administrative Rules relating to Worker's Compensation Medical Fee Schedule, I hereby request authorization for medical treatment and/or continued medical treatment for the named claimant/injured party.

TO: \_\_\_\_\_ Carrier &/or Adjuster \_\_\_\_\_ Date of Request: \_\_\_\_\_  
 \_\_\_\_\_ Street Address \_\_\_\_\_ Transmitted: [ ] Mail and [ ] Fax # \_\_\_\_\_  
 \_\_\_\_\_ City State Zip \_\_\_\_\_ Start date: \_\_\_\_\_

Patient	Last	First	M.I.	SSN(optional)
Name of Employer		Insurance Co:	Date of Accident	Carrier #.
Labor Department #.				

1. Projected start and end date(s) of treatment(s): FROM: Mo. \_\_\_\_ Day \_\_\_\_ Yr \_\_\_\_ TO: Mo \_\_\_\_ Day \_\_\_\_ Yr \_\_\_\_

2. Treatment Modality(ies)/ Procedure(s) Requested:  
 Office Visit \_\_\_\_\_ Initial visit \_\_\_\_\_ Follow up appointment date(s): \_\_\_\_\_  
 Diagnostic Procedure: \_\_\_\_\_ X-Ray \_\_\_\_\_ MRI \_\_\_\_\_ CAT Scan \_\_\_\_\_ Myelogram \_\_\_\_\_ Bone Scan \_\_\_\_\_ EMG \_\_\_\_\_ NCV  
 Laboratory \_\_\_\_\_ [ ] Other \_\_\_\_\_  
 Surgical Procedure(s): \_\_\_\_\_  
 Physician referral for [ ] Consultation [ ] Concurrent care [ ] Assistant/Co-Surgeon Name: \_\_\_\_\_  
 Specialty/Reason: \_\_\_\_\_ Address: \_\_\_\_\_  
 Aquatic Therapy Frequency \_\_\_\_\_ per week for \_\_\_\_\_ weeks  
 Occupational Therapy Frequency \_\_\_\_\_ per week for \_\_\_\_\_ weeks  
 Physical [ ] Massage Therapy Frequency \_\_\_\_\_ per week for \_\_\_\_\_ weeks  
 Acupuncture Frequency \_\_\_\_\_ per week for \_\_\_\_\_ weeks  
 Recondition/ Work hardening Frequency \_\_\_\_\_ per week for \_\_\_\_\_ weeks  
 Other: (specify) \_\_\_\_\_

3. Cost(s): [ ] PURSUANT TO MEDICAL FEE SCHEDULE [ ] Other \$ \_\_\_\_\_

4. Diagnosis: \_\_\_\_\_

5. Prognosis: \_\_\_\_\_

6. Subjective findings (client states): \_\_\_\_\_

7. Objective findings which indicate need for treatment or further treatment: \_\_\_\_\_

8. Specific time schedule of measurable objectives:

1. Baseline at start of treatment plan:

Pain (Least>Most)	0	1	2	3	4	5	6	7	8	9	10
Work tolerance (Type/lbs.)	Sedentary (0-10)		Sedentary-Light (11-15)		Light (16-20)		Light-Medium (21-35)		Heavy (36-50)		
	Medium (36-50)		Medium-Heavy (51-75)		Heavy (76-100)		Very Heavy (>100)				

2. Projection at end of treatment plan:

Pain (Least>Most)	0	1	2	3	4	5	6	7	8	9	10
Work tolerance (Type/lbs.)	Sedentary (0-10)		Sedentary-Light (11-15)		Light (16-20)		Light-Medium (21-35)		Heavy (36-50)		
	Medium (36-50)		Medium-Heavy (51-75)		Heavy (76-100)		Very Heavy (>100)				

IF THE TERMINATION DATE FOR ANY PRIOR TREATMENT PLAN HAS ELAPSED, IT IS REQUESTED THAT SHOULD THE PLAN BE ACCEPTED THAT THE DATE OF ONSET OF THE PLAN BE MADE RETROACTIVE TO THE ELAPSED DATE OF THE PREVIOUS PLAN.

Respectfully submitted by,  _____ _____, M.D.	<input type="checkbox"/> Approved Written Oral [ ] Written to follow oral approval <input type="checkbox"/> Denied Written Reason: _____  Name _____ Date _____
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**Internal use only:**  
 ( ) ALL treatment plans provided with less than 7 calendar days notice is not authorized. Treatment plans shall be submitted every 120 calendar days for 15 or less treatments 60 days after first visit.  
 Date of first visit \_\_\_\_\_ Treatment plan is not required for first 15 or less office visits within 60 days from this date  
 Dates for future submissions (120 cal days): [ ] [ ] [ ] [ ]  
 ( ) FAILURE to request a review of the denial w/ the Director within 14 calendar days after postmark shall be deemed acceptance of the denial. (DCD Cost Review Branch 586-9181)  
 Postmark date \_\_\_\_\_ 14<sup>th</sup> calendar day deadline \_\_\_\_\_ Date request to Director \_\_\_\_\_ Date of hearing \_\_\_\_\_ @ \_\_\_\_\_ Paid \_\_\_\_\_

## LATE TESTIMONY

George M. Waialeale  
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March 20, 2012

### Committee on Economic Revitalization & Business

#### SB 2845 SD1 HD1 Relating to Medical Benefits Under the Workers' Compensation Law

I am here to testify in support of SB 2845 SD 1 HD1. This bill allows the Director of Labor and Industrial Relations to make a decision on disputes regarding treatment plans and continued medical services without a hearing but requires the decision to be rendered within thirty days.

I believe by allowing the Director of Labor and Industrial Relations to make a decision without a hearing will give the Director the ability to meet the thirty day deadline in issuing treatment plan and medical decisions.

I ask for your passage of this legislation.

George Waialeale