HB2017 HD1

Measure Title: RELATING TO WORKERS' COMPENSATION TREATMENT PLANS.

Report Title: Workers' Compensation; Treatment Plans; Electronic Submission

Allows physicians to submit workers' compensation treatment plans to employers by certified mail or facsimile, or if applicable, secure web portal, or secure electronic mail. Requires employers to accept electronically submitted treatment plans and provide an electronic receipt of the submission. (HB2017 HD1)

Companion:

Package: None

Current Referral: CPH, JDL

Introducer(s): NAKASHIMA, KEOHOKALOLE

DAVID Y. IGE GOVERNOR



JAMES K. NISHIMOTO DIRECTOR

CINDY S. INOUYE DEPUTY DIRECTOR

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

March 18, 2016

TESTIMONY TO THE SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

> For Hearing on Tuesday, March 22, 2016 9:30 a.m., Conference Room 229

> > ΒY

JAMES K. NISHIMOTO DIRECTOR

House Bill No. 2017, H.D. 1 Relating to Workers' Compensation Treatment Plans

WRITTEN TESTIMONY ONLY

TO CHAIRPERSON ROSALYN BAKER AND MEMBERS OF THE COMMITTEE:

Thank you for the opportunity to provide comments on H.B. 2017, H.D. 1.

The purposes of H.B. 2017, H.D. 1, are to: 1) allow physicians to submit workers' compensation treatment plans to employers by certified mail or facsimile, or if applicable, secure web portal, or secure electronic mail; and 2) require employers to accept electronically submitted treatment plans and provide an electronic receipt of the submission.

The Department of Human Resources Development ("DHRD") has a fiduciary duty to administer the State's self-insured workers' compensation program and its expenditure of public funds. In that regard, we submit the following comments on this bill.

First, the 2015 Legislature adopted H.C.R. 168, H.D. 2, S.D. 1, and H.R. 104, H.D. 2, to convene a working group of interested parties who participate in the workers' compensation system to streamline the State's workers' compensation process. The group is headed by the Director of Labor and Industrial Relations ("Director") and H.B. 2017, H.D. 1 March 18, 2016 Page 2

involves a full array of employers, insurers, attorneys, health care providers, and other entities who are most knowledgeable of the intricacies of the existing system and are in the ideal position to know what statutory, regulatory, or operational changes would have the most positive impact for all stakeholders in the system. Significantly, one of the working group's specific tasks is to consider converting the workers' compensation claims filing process to a computerized system. Therefore, we respectfully recommend deferring any new legislation until the working group presents its report to the 2017 Legislature of its findings and recommendations, including any proposed legislation.

Second, one of the express purposes of this bill "is to improve the efficiency of Hawaii's workers' compensation system by allowing the transmittal of treatment plans through electronic media." We are fully in accord with the intent but note that the Director has promulgated administrative rules in Title 12, Chapter 15, Workers' Compensation Medical Fee Schedule ("WCMFS"), which prescribe very specific and comprehensive requirements governing the submittal, approval, and denial of treatment plan requests by physicians and other providers of service. Passage of this bill would override many of the WCMFS provisions and also lead to very real practical and operational issues, as raised in testimonies on this bill and in the 2015 session on an identical measure, S.B. 809, including: 1) creating a different approval process between physicians and other providers of service other than physicians and requests for concurrent treatment, consultations, and surgery; 2) the designation of specific electronic addresses for transmitting and receipt of treatment plans; 3) clarification of receipt dates due to the proposed seven-day objection deadline; 4) the propriety of the proposed seven-day deadline; and 5) security of electronically transmitted information. As indicated above, the working group of well-informed participants in the system, representing all the interests involved, would be in the best position to recommend changes to the Legislature that would improve the efficiency of Hawaii's workers' compensation system, including through the use of electronic media.



Tuesday March 22, 2016 9:30 AM. Capitol Rm. 229

To: SENATE COMMITTEE ON CONSUMER PROTECTION & HEALTH Sen. Rosalyn Baker, Chair Sen. Michelle Kidani, Vice Chair

From: Hawaii Medical Association
Dr. Scott McCaffrey, MD, President
Dr. Linda Rasmussen, MD, Legislative Co-Chair
Dr. Ronald Keinitz, MD, Legislative Co-Chair
Dr. Christopher Flanders, DO, Executive Director
Lauren Zirbel, Community and Government Relations

Re: <u>HB 2017 HD1 – RELATING TO WORKERS COMPENSATION TREATMENT PLANS</u>

IN SUPPORT

Chair, Vice Chair, and Committee Members:

The Hawaii Medical Association (HMA) is in support of HB2017 HD1. It is time for the Workers Compensation program to come into line with the advancement of other health care payment providers.

Thank you for the opportunity to provide this testimony.

OFFICERS

PRESIDENT – D. SCOTT MCCAFFREY, MD, PRESIDENT ELECT – BERNARD ROBINSON, MD IMMEDIATE PAST PRESIDENT – ROBERT SLOAN, MD, SECRETARY - THOMAS KOSASA, MD, TREASURER – MICHAEL CHAMPION, MD, EXECUTIVE DIRECTOR – CHRISTOPHER FLANDERS, DO



Pauahi Tower, Suite 2010 1003 Bishop Street Honolulu, Hawaii 96813 Telephone (808) 525-5877

Alison H. Ueoka President

TESTIMONY OF ALISON UEOKA

COMMITTEE ON COMMERCE, CONSUMER PROTECTION & HEALTH Senator Rosalyn H. Baker, Chair Senator Michelle N. Kidani, Vice Chair

> Tuesday, March 22, 2016 9:30 a.m.

HB 2017, HD1

Chair Baker, Vice Chair Kidani, and members of the Committee on Commerce, Consumer Protection & Health, my name is Alison Ueoka, President 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 thirty-six percent of all property and casualty insurance premiums in the state and 63% of workers' compensation premiums in the state.

Hawaii Insurers Council **<u>supports</u>** this bill which seeks to streamline the treatment plan process by allowing physicians to transmit treatment plans electronically. In addition it requires denials of treatment plans to be submitted within seven business days with documentation from the employer. Finally the bill codifies existing administrative rules which allow the employer to object to the treatment plan after acceptance if new evidence is received contrary to the plan.

We believe this bill will promote faster handling of treatment plans and get injured workers back to work. Thank you for the opportunity to testify.

Scott J. Miscovich, MD, LLC

45-1144 Kamehameha Hwy #500 Kaneohe, Hawaii 96744 Phone: (808) 247-8768 Facsimile: (808) 247-8919

March 21, 2016

To: Senator Rosalyn H. Baker, Chair Senator Michelle N. Kidani, Vice Chair And Members of the Committee on Commerce, Consumer Protection, and Health

RE: HB 2017 H.D. 1 RELATING TO WORKERS' COMPENSATION TREATMENT PLANS. Hearing: March 22, 2016, at 9:30 am

Chairman, and members of the committee, I am a practicing medical physician, Scott J. Miscovich, MD. I have been in the medical care and treatment of injured workers since 1995. I am in strong support of HB 2017 Relating to Workers' Compensation Treatment Plans, with revisions.

This is an updated to my February 4, 2016 testimony. HB 2017 HD 1 corrects key points, of which I am in agreement to the seven (7) business day deadline. However, the infrastructure is already in place for all interested parties to send, receive, and confirm receipt of treatment plans via <u>facsimile</u>. Thus, the implementation date of 2021 is unduly burdensome and this method can immediate be implemented.

Please take into consideration of having a system of sending and receiving treatment plans via **email** implemented by 2021. This will allow more time to create a method of secure transmission of medical information pursuant to current HIPPA laws.

Please amend HB 2017 H.D. 1 as stated above and move the bill towards passage.

Thank you for my testimony.

Scott J. Miscovich, MD Family Medicine President, Work Injury Medical Association of Hawaii, Chairman, State of Hawaii Narcotics Policy Work Group Attorney at Law, A Limited Liability Law Corporation

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

THE SENATE THE TWENTY-EIGHTH LEGISLATURE REGULAR SESSION OF 2016

COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

Senator Rosalyn H. Baker, Chair Senator Michelle N. Kidani, Vice Chair

FROM: Dennis W. S. Chang, Attorney-at-law

AMENDED NOTICE OF HEARING

DATE: Tuesday, March 22, 2016 TIME: 9:30am PLACE: Conference Room 229 State Capitol 415 South Beretania Street

Re: HB No. 2017 Relating to WC Treatment Plans

I. Introduction.

We have identified the clog in our "broken workers' compensation (WC) system." As a labor attorney practicing for nearly four decades with a heavy emphasis in the processing of WC claims, I wholeheartedly support HB No. 2017, HD1. Innumerable clients and unrepresented injured workers seeking representation inevitably have issues of long delayed medical care, services, and supplies. They are frequently told that there needs to be an approval from the self-insured employers and/or insurance carriers (employers) before medical providers can proceed with any medical treatment. Delays in securing vital medical care, services, and supplies.

HB No. 2017, HD 1 is indisputably a step in the right direction to make that part of the WC process relating to treatment plans (TPs). This is particularly so when the current practice is wholly contrary to the public policy of prompt delivery of critical medical care, services, and supplies, consistent with the humanitarian purpose of the WC statute, and the case law to secure prompt determinations on TPs so that injured workers can return to gainful employment.

II. Current Practice.

The absurdity of the current practice in not responding is reflected by the argument that there is no need for a change because medical providers can proceed at their peril in the absence of a denial. That assumes that the employers will honor the payments and not object later by arguing that the TP was flawed. This is the current state of practice leading to a cottage industry of attorneys either picking apart a treatment plan or after the fact, litigating the treatment rendered and billings for treatment rendered. The current rule allows that a medical provider can proceed to treatment, but the employer has the opportunity to deny the claim at any time, and in actuality the medical provider may be unpaid even when the employers failed to object.

DENNIS W.S. CHANG

Attorney at Law, A Limited Liability Law Corporation

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

I have emphasized this point in previous testimony. In this regard, the employers are the cost drivers in the WC system because wage loss in the form of temporary total disability benefits (TTD) continue to be paid. Alternatively, the medical providers are hesitant to initiate necessary care beyond emergency care so the injured workers suffer needlessly and oftentimes end up with a stress claim. The injured workers are terminated from the employers' medical insurance plans and must then seek out medical benefits and become wards of the State, if they qualify. However, that is not obviously not the outcome injured workers desire or we all expected. Instead, We want an efficient system of the prompt delivery of medical treatment.

The absurdity in the current practice results in undue cost drivers in the WC system. recover and attempt an expeditious return to gainful employment. This outrageous practice was addressed as aptly illustrated in the recent Hawaii Supreme Court case of *BENJAMIN N. PULAWA, III vs. OAHU CONSTRUCTION CO., LTD.*, 136 Haw. 217; 361 P.3d 444; 2015 Haw. LEXIS 295 (11/4/15). See prior testimony on HB 2017, HD 1.

III. Discussion.

HB 2017, HD 1 is intended to greatly improve the efficiency of the Hawaii's WC system by modernizing the system based on advances in technology, which has been long overdue by utilizing the transmittal of TPs by facsimiles and other electronic media. Second, it requires a response in the form of an objection to TPs. There are a number of suggested changes, which I believe will greatly improve the proposed bill by making it simple. We need to be mindful that the pendulum has swung far to the right and what we really need is a fair workable process.

Opponents have indicated that the utilization of a secured email for the transmittal of TPs may be cost prohibitive. I disagree with that proposition, but believe that leaving in the requirement for the transmittal of TPs through electronic medium will be unworkable at least in the near future. You will need possibly encryption and keep a password. Every time a TP is transmitted by email it will undoubtedly be left without a response for possible fear of violation of HIPPA. We should be seeking a simple process that is workable. The current process does not allow for facsimiles (though increasing used), nor does it require a response within seven days and this is inconsistently used by some providers and employers. That has given the employers great latitude by ignoring the TPs.

Medical providers should be allowed to use facsimiles, which is a simple process. Making it into law will greatly improve the efficiency in the system in light of technical advances rather than relying on the potentially onerous process of emails. HB 2017, HD 1 is set forth in the pertinent parts in bold with suggested changes in all bracketed materials.

SECTION 1. The legislature finds that Hawaii's current system for physicians to submit treatment plans in workers' compensation claims is in need of modernization given advancements in technology. The legislature further finds that allowing treatment plans to be faxed and emailed will greatly improve the efficiency of Hawaii's workers' compensation system.

The purpose of this Act is to improve the efficiency of Hawaii's workers' compensation system by allowing the transmittal of treatment plans [ADD period and delete through electronic media.

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SECTION 2. Chapter 386, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§386- Treatment plans. (a) Notwithstanding any law to the contrary, a physician [ADD, "which should be broadly defined to include any medical provider"] may transmit a treatment plan to an employer by certified mail or facsimile [Add. and delete the remainder "; provided that an employer may accept a treatment plan transmitted by secure web portal or secure electronic mail.] (b) Beginning January 1, 2021 [ADD "immediately" because this is already in partial use in practice by many in the WC process and we are not using an onerous method of secured electronic emails and DELETE ", an employer shall allow a physician to transmit a treatment plan to an employer by facsimile, secure web portal, or secure electronic mail."]

(c) A treatment plan shall be deemed received by an employer when the plan is sent by certified mail or facsimile [ADD. and delete "or if applicable, secure web portal or secure electronic mail with reasonable evidence, including an automatic electronic receipt, showing that the treatment plan was received."]

(d) A treatment plan shall be deemed accepted if an employer fails to file with the director by certified mail, or facsimile [Add. and delete the remainder ", or if applicable, secure web portal, or secure electronic mail"]:

- (1) An objection to the treatment plan;
- (2) Any applicable documentary evidence supporting the denial; and
- (3) A copy of the denied treatment plan, copying the physician and the injured employee, within seven business days after the employer's receipt of the treatment plan.

copying the physician and the injured employee , within seven business days after the employer's receipt of the treatment plan.

(e) Pursuant to subsection (a), employers shall accept the applicable electronic submissions of treatment plans and provide an automatic electronic receipt upon receipt of the submitted treatment plan.

(f) After acceptance of the treatment plan, an employer may file an objection to the plan if new documentary evidence is received contrary to the accepted treatment plan."

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

The foregoing changes simplifies HB 2017, HD 1, are consistent with the humanitarian purpose of the law, modernize the WC process to improve efficiency in light of our rapid

technological developments and are consistent with the practice used by increasing parties today

III. CONCLUSION

HB 2017, HD1 accomplishes two primary goal by putting into practice what is used by

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many at different times, the transmittal and responses for TPs by fasimile. We should take away the onerous practice of using email as argued by opponents because there will be changes and a learning curve and much delay. Delay we cannot afford. <u>Finally, the proposed</u> <u>bill makes it fair, if amended, by balancing the need for efficiency and allowance for objections</u>.

LAW OFFICES OF

MASUI A MASUI

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March 19, 2016

TO: SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

RE: TESTIMONY IN SUPPORT OF HB 2017 REGARDING WORKERS' COMPENSATION TREATMENT PLANS

Dear Chairperson Baker and members of the Committee:

The present practice for allowance of medical treatment under our Workers' Compensation law, Chap. 386 as it has been administratively structured has become dysfunctional as delays by insurance carrier objection and the need for hearing and ruling on the objection is typically 60-90 days or more despite recent changes in the law. It is well known that Hawaii suffers from a shortage of medical providers and lack of specialists. To compound the shortage of physicians, most of the medical profession has dropped out of the Worker's Compensation system out of frustration and lack of adequate financial compensation.

The few medical professionals willing to treat injured workers are constantly hamstrung by the inability to readily conduct diagnostic testing or obtain a consultation under the workers compensation system with a specialist in the field to further determine treatment and diagnostic recommendations.

There are now frequent insurance carrier objections to requests for treatment, diagnostic testing or consultation. Hearings at the initial Disability Compensation Division to schedule and to rule on carrier objections take five to ten months to accomplish. It was estimated by one member of the Labor and Relations Appeals Board that about 50% of appeals presently before the Board are related to the denials of treatment plans under current law and practice.

These objections to treatment are frequently being made by insurance personnel without medical training, minimal medical knowledge, and often without medical evidence. Moreover, many medical providers will hesitate to provide the diagnostic testing or consultation under private medical insurance when confronted with a denial by a worker's compensation insurance company.

LAW OFFICES OF MASUI

Stanford H. Masui • Erin B.J.H. Masui Seven Waterfront Plaza, Suite 400 • 500 Ala Moana Blvd. • Honolulu, HI 96813 PH. 543-8346 • FAX 543-2010 The result has been lengthy delay in medical services for the injured worker and delayed return to the work force.

A frequent objection made by some carriers and insurance attorneys has been that the present Medical Fee Schedule requires that a physician "shall mail a treatment plan to the employer". HB 2017 allows the submission of treatment plans by electronic means, i.e., fax or email. This bill will improve efficiency and responsiveness of all parties in the workers' compensation system.

It has also become an increasing and frustrating practice for insurance carriers and adjusters to simply fail to respond to a request for treatment. No health care professional will proceed with treatment under workers' compensation unless written approval is received. The committee is strongly urged to retain the seven business day response time requirement and consider adding that "if no response is received by a health care provider, the plan is deemed approved."

The committee is also requested to consider reducing the effective date to one year as adjustments to electronic systems can be done simply by adjusting now-existing electronic procedures without any new hardware required, and certainly would not take five years to implement. For example, most fax modems can be programmed to automatically issue a transmittal report confirming transmission.

Thank you for your careful consideration for the benefit of all participants in the workers' compensation system

Sincerely,

Stanford H. Masui

STANFORD H. MASUI

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