TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-SECOND LEGISLATURE, 2023

ON THE FOLLOWING MEASURE:
H.B. NO. 83, RELATING TO WORKERS' COMPENSATION.

BEFORE THE:
HOUSE COMMITTEE ON LABOR AND GOVERNMENT OPERATIONS

DATE: Tuesday, January 31, 2023 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 309

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Carissa A. Goto or Li-Ann Yamashiro, Deputy Attorneys General

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Chair Matayoshi and Members of the Committee:

The Department of the Attorney General provides the following comments.

This bill seeks to add a new section to chapter 386, Hawaii Revised Statutes (HRS), to (1) require payment of medical bills by an insurer or self-insured employer (hereinafter collectively referred to as "insurer") within sixty days from receipt of the bills, or be subject to a penalty and interest, (2) provide a procedure governing disputes between insurers and medical providers involving non-compliance with the applicable fee schedule, (3) set forth a procedure governing disputes between insurers and medical providers for reasons other than non-compliance with the applicable fee schedule, and (4) provide a penalty and interest if the insurer fails to pay within twenty days of an order directing payment.

We have several comments.

First, the procedures proposed in subsections (d) and (e) are inconsistent with section 386-73, HRS, which provides that the Director of Labor and Industrial Relations (Director) has original jurisdiction over disputes arising under chapter 386. The proposed subsections (d) and (e) provide that disputes will be resolved by the Labor and Industrial Relations Appeals Board (Board). Although we note that section 386-73, HRS, gives original jurisdiction over controversies to the Director "unless otherwise provided," the new procedure of having the Board first resolve these matters conflicts

with the established procedure of issues being first addressed by the Director and may cause confusion and unnecessary litigation.

To maintain consistency with established procedures in chapter 386, we recommend that the Director hear the disputes first and recommend the following amendments:

(1) Amend subsection (c) at page 2, line 18, to read as follows:
. . . shall be submitted to the [~~employer~~]insurer or self-insured employer. . . .

(2) Amend subsection (d) at page 4, lines 5-9, to read as follows:
. . . of the explanation of review, the insurer or self-insured employer [~~shall~~] may file a [~~petition and a declaration of readiness to proceed with the appeals board~~] request for hearing within sixty days [~~of service of the objection.~~] after the objection is sent. If the insurer or self-insured employer prevails, [~~before the appeals board, the appeals board shall order~~] the [~~physician~~] provider shall be ordered to reimburse the [~~employer~~] insurer or self-insured employer. . . .

(3) Amend subsection (e) at page 4, lines 18-20, to read as follows:
. . . by the [~~employee or the dependents of a deceased employee~~]provider, within twenty days from the [~~filing of an~~] order [~~of the appeals board~~] directing payment, and where payment . . . .

(4) Amend subsection (e) at page 5, lines 3-4, to read as follows:
. . . retroactive to the date of [~~the filing of~~] the order [~~of the board~~] directing payment.

Second, the procedure proposed in subsection (c) is inconsistent with section 386-21(c), HRS. Section 386-21(c) provides in relevant parts, "[w]hen a dispute exists . . . regarding the amount of a fee for medical services, *the director may resolve the dispute* in a summary manner . . . ." (emphasis added). The proposed subsection (c) bypasses the Director's review of the dispute involving non-compliance with the

applicable fee schedule following the issuance of the "final written determination" by the insurer. To avoid creating a different procedure for only one particular type of issue, we recommend including a provision allowing the provider to request that the Director resolve the dispute should the provider continue to disagree with the insurer's determination.

Third, the wording in subsection (b)(1) at page 2, lines 10-11, stating "that portion of the charges that do not exceed the amount deemed reasonable pursuant to subsection (e)" appears to be unclear and may benefit from clarification.

Fourth, subsections (b) and (e) both provide that an insurer has twenty days to comply with an order directing payment or be subject to a penalty and interest. As written, it is unclear whether the insurer could still be subject to the penalty despite filing a timely appeal of the order directing payment. It is also unclear to which period the interest would apply once an appeal is filed. We recommend that these matters be clearly spelled out in these subsections.

Fifth, subsection (d) at page 4, lines 7-10, provides that if the employer prevails, the Board shall order the physician to reimburse the employer for the amount of the paid charges found to be unreasonable. Subsection (d), however,provides for a penalty where the insurer denies payment. If an amount was denied and not paid, there would be nothing to reimburse. The wording in subsection (d) may need to be clarified, and the Department will be happy to work with the Legislature to clarify these provisions. Additionally, page 4, line 2, provides that the provider may "object to the denial" without providing further instruction or clarity regarding how this objection needs to be made (e.g., in writing), or whether the objection should be filed with the Director. We recommend that this provision be clarified.

Finally, subsection (e) provides that the employee or their dependents can request that a penalty and interest be added to the amount due to the provider when payment is not timely made. However, employees and their dependents are not involved in billing disputes between an insurer and a provider. Therefore, we recommend changing "employee or the dependents of a deceased employee" to "provider." Thank you for the opportunity to testify on this bill.

LATE *Testimony submitted late may not be considered by the Committee for decision making purposes.

JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LIEUTENANT GOVERNOR

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DIRECTOR

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DEPUTY DIRECTOR

STATE OF HAWAIʻI
KA MOKUʻĀINA O HAWAIʻI
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
KA ʻOIHANA PONO LIMAHANA

January 31, 2023

To: The Honorable Scot Z. Matayoshi, Chair,
The Honorable Andrew Takuya Garrett, Vice Chair, and
Members of the House Committee on Labor & Government Operations

Date: Tuesday, January 31, 2023
Time: 9:00 a.m.
Place: Via Videoconference and Conference Room 309

From: Jade T. Butay, Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. 83 RELATING TO WORKERS' COMPENSATION

I. OVERVIEW OF PROPOSED LEGISLATION

The **DLIR opposes** this measure as its intent is already provided for in the existing statute and administrative rule. HB83 proposes to add a new section to Chapter 386, Hawaii Revised Statutes (HRS), relating to payment of bills by the employer and specifies a process for bill dispute resolution by establishing deadlines and penalties when paying or disputing provider bills related to a workers compensation injury.

II. CURRENT LAW

Section 386-21(c), states in part, "When a dispute exists between an insurer or self-insured employer and a medical services provider regarding the amount of a fee for medical services, the director may resolve the dispute in a summary manner as the director may prescribe; provided that a provider shall not charge more than the provider's private patient charge for the service rendered."

The Workers' Compensation Medical Fee Schedule, Section 12-15-94 (b), Hawaii Administrative Rules (HAR) states in part, "When a provider of service notifies or bills an employer, the employer shall inform the provider within sixty calendar days of such notification or billing should the employer controvert the claim for services. Failure of the employer to notify the provider of service shall make the employer liable for services rendered until the provider is informed the employer controverts additional services."

Subsection (c) states in part, “Employer shall pay all charges billed within sixty calendar days of receipt of such charges except for items where there is a reasonable disagreement.” If more than sixty calendar days lapse, payment of billing shall be increased by one per cent per month of the outstanding balance.

Subsection (d) states in part, “In the event of a reasonable disagreement cannot be resolved, the employer or provider may request intervention by the director…” The director shall, in turn, send the parties a notice to negotiate during the thirty-one calendar days following the date of the notice from the director. If the parties fail to come to an agreement within fourteen calendar days following the thirty-one-day period, either party may file a request to the director. The director shall send the parties a second notice to submit position statements with documentation. The director shall review the position of both parties and render an administrative decision without hearing.

III. COMMENTS ON THE HOUSE BILL

DLIR opposes this measure as the intent is already provided for in the existing statute and administrative rule and offers the following comments:

- Section (b) of this measure is not clear as it provides that payment shall be made within twenty days of the service of an order of the appellate board (Labor and Industrial Relations Appeals Board-LIRAB) or director directing payment. For the appellate board to issue an order, a decision by the director would be required.

- Section (c) is not clear as to what happens if the employer’s final written determination concludes that the bill continues to be contested and will remain unpaid.

- Section (d) is unclear as it provides that the employer shall file a petition and declaration of readiness to proceed with the appeals board within sixty days of the service of the objection. As mentioned above, for the appellate board to be involved, a decision by the director is required.

- Section (d) also provides that if the employer prevails before the appeals board, the appeals board shall order the physician to reimburse the employer for the amount of the paid charges found to be unreasonable. It is unclear if this section implies that the employer voluntarily paid the physician the entire amount even if there was a dispute and employer did not adhere to section (c) or section (d).

- Section (e) requires clarification as it provides in part that if payment is not made within twenty days from the filing of an order of the appeals board

directing payment, that portion of the sum of the unpaid bill shall be increased by ten percent together with interest. As the employee or the dependents of a deceased employee should not receive bills for a compensable worker's compensation injury, it is unclear if this measure would require the employer or insurer to instruct the employee or the dependents of the employee to file this request on behalf of the employer or insurer in order for those late payment penalties to be imposed.

- Section (f) of this measure requires further clarification as it is unclear if this section may be addressing the need for services to be questioned prior to the billing (Treatment Plan request) or if this section may be reiterating sections (c) and (d) of this measure.

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TESTIMONY OF MILIA LEONG

COMMITTEE ON LABOR & GOVERNMENT OPERATIONS
Representative Scot Z. Matayoshi, Chair
Representative Andrew Takuya Garrett, Vice Chair

Tuesday, January 31, 2023
9:00 a.m.

HB 83

Chair Matayoshi, Vice Chair Garrett, and members of the Committee on Labor & Government Operations, my name is Milia Leong, Vice President of Claims and Medical Management Services for HEMIC. I am testifying today on behalf of Hawaii Insurers Council. The 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 forty percent of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **opposes** this bill. This bill appears to impose a very complex process on medical payments, but also imposes different timelines on employers and providers, with shorter timelines for employers. The bill does not apply to government employees and only to private sector employees. These provisions are inherently unfair and would not provide a better process than what exists today.

Currently, payments for medical services are outlined under Sec. 12-15-94, HAR. The provisions in this bill would replace that process with one that would create chaos. Today, the billing dispute process encourages the parties to negotiate and work towards an agreement. We believe that this bill imposes a process which is more complicated and unfair on its face with different timelines and application depending on whether one is a government worker or not. The bill would lessen the negotiation process between parties

and unnecessarily burden the Director with decisions and potential hearings which adds costs, delays, and does not benefit the injured worker.

Finally, the complex and uneven timelines create additional burdens for both providers and employers, which again, does nothing to benefit the injured worker. This creates more paperwork for both parties which exacerbates the lack of medical providers willing to take on workers' compensation injuries. The paperwork load and complex process is a major deterrent cited by providers for not wanting to treat injured workers.

We ask that this bill be held. Thank you for the opportunity to testify.