



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

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March 12, 2013

To: The Honorable Clayton Hee, Chair,
The Honorable Maile S.L. Shimabukuro, Vice Chair, and
Members of the Senate Committee on Judiciary & Labor

Date: Tuesday, March 12, 2013
Time: 10:30 a.m.
Place: Conference Room 016, State Capitol

From: Dwight Y. Takamine, Director
Department of Labor and Industrial Relations (DLIR)

**Re: H.B. 922 H.D. 2 Relating to Medical Benefits
Under the Workers' Compensation Law**

I. OVERVIEW OF PROPOSED LEGISLATION

H.B. 922 H.D. 2 amends Section 386-21(c), Hawaii Revised Statutes (HRS), by allowing, rather than requiring, the Director of Labor and Industrial Relations (Director) to make a decision on disputes regarding treatment plans and continued medical services without a hearing, provided that both parties consent. The Director shall make a decision within thirty days of the filing of a dispute between an employee and the employer or the employer's insurer. This bill will sunset on June 30, 2015.

The department supports this Administration measure, as it will allow the director to better meet the thirty-day deadline in issuing treatment plan and medical decisions.

II. CURRENT LAW

Section 386-21(c), HRS, requires the director to make a decision within thirty days of the filing of a dispute regarding a proposed treatment plan or whether medical services should be continued. Section 386-86, HRS, requires a hearing to be held for all decisions issued.

III. COMMENTS ON THE HOUSE BILL

The proposal will allow the Director to better meet the thirty-day deadline to issue a decision with or without a hearing for treatment plans and discontinuance of medical services decisions. Because of recent budget cuts and staff reductions in the branches that service the hearings system, it currently takes three to four months to: schedule a hearing involving a treatment plan or medical services, notice the parties, conduct the hearing, and render a decision.

This measure will facilitate the worker's compensation process as injured workers, insurance carriers, and employers will receive these decisions more promptly. This measure will also allow other cases to be scheduled sooner as the number of hearings needing to be scheduled will decrease.

COMMITTEE ON JUDICIARY AND LABOR

Sen. Clayton Hee, chair
Sen. Maile Shimabukuro, Vice Chair

HEARING

Date: Tuesday, March 12, 2013
TIME: 10:30 am
PLACE: Conf Rm 016

Chair Hee, Vice Chair Shimabukuro, and committee members:

Allow me to submit testimony on this bill on behalf of the Hawaii State Chiropractic Association. The HSCA fully **supports** this bill and has done so for the past many sessions that this subject has been introduced. I am the current President and Executive Director of the HSCA.

This bill would not have been introduced over the last several legislative sessions if it were not for the ongoing problem of trying to get timely hearings to determine eligibility and treatment. Delays in this process are common and deny injured workers prompt and necessary care. Such delays also prolong the claims process and can cause an adversarial relationship to develop between the parties.

In addition, injuries not treated in a timely manner can become complicated, chronic, and sometimes permanent when injuries don't receive proper care and can result in the need for more treatments once care is eventually approved.

If hearings delays are due to a backlog of cases, the remedy lies in this bill which would allow the Director to render a decision on eligibility and treatment without a hearing. This bill would require the mutual consent of both parties, and that consent indicates that both parties desire to move quickly forward.

The HSCA urges the legislature to recognize this problem as one needing remedy. Please pass HB 922 HD2 without delay.

Sincerely,



Dr. Gary Saito
President and Executive Director
Hawaii State Chiropractic Association

TESTIMONY BEFORE THE HOUSE
COMMITTEE ON JUDICIARY AND LABOR

Tuesday, March 12, 2013
10:30 a.m.

H.B. 922, HD2
RELATING TO MEDICAL BENEFITS UNDER WORKERS' COMPENSATION LAW

By Marleen Silva
Director, Workers' Compensation
Hawaiian Electric Company, Inc.

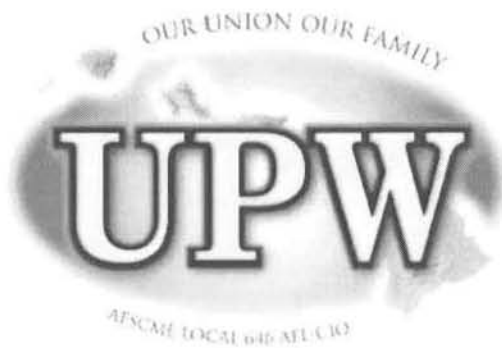
Chair Hee, Vice Chair Shimabukuro, and Members of the Committee:

Hawaiian Electric Co. Inc., its subsidiaries, Maui Electric Company, LTD., and Hawaii Electric Light Company, Inc. **supports H.B. 922, HD2 with its current amendments.** Our companies represent over 2,000 employees throughout the State.

This revised proposal amends Section 386-21(c), HRS allowing the Director of Labor and Industrial Relations to make a decision on disputes regarding proposed treatment plans or the continuation of medical services, without a hearing, upon mutual consent of both parties.

We appreciate the intent to promote collaboration to resolve disputes equitably and to eliminate unnecessary hearings when possible.

Thank you for this opportunity to submit testimony.



THE HAWAII STATE SENATE
The Twenty-Seventh Legislature
Regular Session of 2013

COMMITTEE ON JUDICIARY AND LABOR
The Honorable Sen. Clayton Hee, Chair
The Honorable Sen. Maile Shimabukuro, Vice Chair

DATE OF HEARING: Tuesday, March 12, 2013
TIME OF HEARING: 10:30 a.m.
PLACE OF HEARING: Conference Room 16

**TESTIMONY ON HB922 HD2 RELATING TO MEDICAL BENEFITS UNDER THE
WORKERS' COMPENSATION LAW**

By DAYTON M. NAKANELUA,
State Director of the United Public Workers, AFSCME Local 646, AFL-CIO

My name is Dayton M. Nakanelua and I am the State Director of the United Public Workers, AFSCME, Local 646, AFL-CIO (UPW). The UPW is the exclusive representative for approximately 11,000 public employees, which include blue collar, non-supervisory employees in Bargaining Unit 01 and institutional, health and correctional employees in Bargaining Unit 10, in the State of Hawaii and various counties. The UPW also represents about 1,500 members of the private sector.

The UPW supports HB922 HD2 that allows the Director of Labor and Industrial Relations to make a decision on disputes regarding treatment plans and continued medical services without a hearing, upon the mutual consent of both parties.

This measure will expedite the decision making process and reduce the number of hearings, allowing for more efficient scheduling and handling of disputes.

Thank you for the opportunity to testify.

WIMAH

WORK INJURY MEDICAL ASSOCIATION OF HAWAII
91-2135 FORT WEAVER ROAD SUITE #170
EWA BEACH, HAWAII 96706

MAULI OLA
THE POWER OF HEALING

MARCH 12, 2013

COMMITTEE ON JUDICIARY AND LABOR

HOUSE BILL 922 HD2

RELATING TO MEDICAL BENEFITS UNDER THE WORKERS' COMPENSATION LAW

ALLOWS THE DIRECTOR OF LABOR AND INDUSTRIAL RELATIONS TO MAKE A DECISION ON DISPUTES REGARDING TREATMENT PLANS AND CONTINUED MEDICAL SERVICES WITHOUT A HEARING, UPON THE MUTUAL CONSENT OF BOTH PARTIES..

WE BELIEVE THIS BILL WILL SPEED UP THE PROCESS OF WORKERS' COMPENSATION.

YOUR PASSAGE OF THIS BILL WILL BE GREATLY APPRECIATED.

GEORGE M. WAIALEALE
EXECUTIVE DIRECTOR
WORK INJURY MEDICAL ASSOCIATION OF HAWAII



Property Casualty Insurers
Association of America

Advocacy. Leadership. Results.

To: The Honorable Clayton Hee, Chair
Senate Committee on Judiciary and Labor

From: Mark Sektan, Vice President

Re: **HB 922 HD2 – Workers’ Compensation Medical Benefits**
PCI Position: Support

Date: Tuesday, March 12, 2013
10:30 a.m., Conference Room 016

Aloha Chair Hee and Members of the Committee:

The Property Casualty Insurers Association of America (PCI) supports HB 922 HD2 as amended. Existing law grants to the Department of Labor and Industrial Relations Director the authority to resolve disputes between an employee and the employer or the employer's insurer regarding the proposed treatment plan or whether medical services should be continued. HB 922 HD2 would eliminate the requirement that the director hold a hearing to settle medical disputes pending before the director.

The hearing process allows both parties the opportunity to share additional information with the director to ensure the director's decision is based on the most comprehensive information available. Elimination of the hearing would deprive the director of a complete record on which to make the decision on the whether a proposed treatment plan or medical service is both appropriate and effective for the injured worker. We do, however, understand there may be situations where neither party feels a hearing is necessary and the director may proceed with the decision making process. We appreciate the amendments that allow the hearing to be waived "upon mutual consent of both parties." With this amendment, the process can be made more efficient without sacrificing the benefit of complete information.

For these reasons, PCI asks the committee to pass this bill in committee.

THE SENATE
THE TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2013

COMMITTEE ON JUDICIARY & LABOR

Sen. Clayton Hee, Chair
Sen. Maile S.L. Shimabukuro, Vice Chair

Hearing: Tuesday, March 12, 2013

Time: 10:30 a.m.

Place: Conference Room 016

TESTIMONY OF ILWU LOCAL 142 RE:
HB 922, HD 2, RELATING TO MEDICAL BENEFITS UNDER
THE WORKERS' COMPENSATION LAW

Sen. Hee, Vice Chair Shimabukuro, Members of the Committee on Judiciary & Labor:

Thank you for the opportunity to present testimony regarding HB 922, H.D.1. This bill empowers the Disability Compensation Division ("DCD") of the Dept. of Labor and Industrial Relations ("DLIR") to decide disputed medical treatment issues without a hearing provided both parties consent. We support H.B. 922, H.D. 2 with its present amendments.

Very large demands have been placed upon the department in recent years to adjudicate a high caseload with less than adequate resources. It is therefore understandable that DCD should seek to adjudicate medical disputes without a hearing in an effort to expedite its decision making. However, determining whether medical care should be approved can be a complex matter which involves assessment of personal credibility, not merely a review of conflicting written physicians reports.

The right to a hearing before a person is deprived of property or liberty is an important principle of constitutional law as well as a sound administrative practice. Without attempting to engage in sophisticated or definitive legal analysis, it is apparent that employers and insurers may be constitutionally entitled to have a hearing before they are ordered to pay for medical treatment under a line of U.S. Supreme Court cases originating with Goldberg v. Kelly, 397 U.S. 254 (1970)(Welfare recipients cannot be deprived of existing benefits without having an oral hearing before an impartial decision maker beforehand). Requiring the consent of both parties to make a decision without a hearing alleviates this constitutional concern entirely, yet will still reduce the administrative burden the department currently faces. H.B. 922, H.D2 thoughtfully incorporates the requirement of mutual consent to have a medical dispute decided without a hearing.

ILWU is pleased to support H.B. 922, H.D. 2 in its current form and urges its enactment as a sensible and constructive modification to existing law.