

Hawaii State Legislature  
House Committee on Labor and Public Employment  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, HI 96813

March 23, 2015

*Filed via electronic testimony submission system*

**RE: SB 1174, SD 2 HD1, Workers' Compensation, IME - NAMIC's Written Testimony for Committee Hearing**

Dear Representative Nakashima, Chair; Representative Keohokalole, Vice-Chair; and members of the House Committee on Labor and Public Employment:

Thank you for providing the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to your committee for the March 24, 2015, public hearing. Unfortunately, I will not be able to attend the public hearing, because of a previously scheduled professional obligation.

NAMIC is the largest property/casualty insurance trade association in the country, serving regional and local mutual insurance companies on main streets across America as well as many of the country's largest national insurers.

Thee 1,300 NAMIC member companies serve more than 135 million auto, home and business policyholders and write more than \$208 billion in annual premiums, accounting for 48 percent of the automobile/homeowners market and 33 percent of the business insurance market. NAMIC has 69 members who write property/casualty and workers' compensation insurance in the State of Hawaii, which represents 30% of the insurance marketplace.

Through our advocacy programs we promote public policy solutions that benefit NAMIC companies and the consumers we serve. Our educational programs enable us to become better leaders in our companies and the insurance industry for the benefit of our policyholders.

NAMIC's members appreciate the importance of streamlining and economizing the independent medical examination and permanent impairment rating examination process, and commend the bill sponsor for his sincere desire to improve the law in this area. However, NAMIC is still concerned with SB 1174, SD2, HD1 and respectfully tenders the following concerns and suggested revisions to the proposed legislation:

**1) NAMIC is concerned that the proposed amendments to Section 386-79, Hawaii Revised Statutes will delay the timely treatment of injured workers.**

The proposed amendments create an elaborate and time-consuming process for selecting a mutually agreed upon qualified physician for an independent medical examination and permanent impairment rating examination. Although this type of collaborative process may sound like a good idea in theory, the practical realities of the situation, especially when an injured worker has retained legal counsel, support the conclusion that this type of selection process will be plagued by unnecessary conflict between the parties over the mutual selection and striking of recommended physicians. The very nature of this selection process and the conflict that will result from the inevitable and unavoidable disagreements between the parties will ultimately delay the retention of a qualified physician, the necessary evaluation of the worker's alleged injuries, and the commencement of medical treatment for the benefit of the worker.

**2) As the time-tested adage goes, "if it isn't broken, don't try to fix it", especially when the proposed fix may actually break it.**

Since the current procedure for selecting and appointing a qualified physician is clear, straightforward, and readily implemented with minimal conflict, NAMIC believes that it makes sense to "stay the course" and not create a new physician selection process that could be rife with conflict.

Moreover, the proposed procedure will only create administrative work and expense for the injured worker and the employer or insurer. If the parties are unable to mutually agree on a qualified physician, the contemplated selection process will lead to nothing more than a dragged-out stalemate where no qualified physician is ever selected.

Specifically, SB 1174, SD2, HD1 proposes an alternating physician selection process that basically allows the injured employee to recommend three of the physicians and the employer recommends the remaining two physicians, then the employer gets to strike three of the physicians (possibly the three selected by the employee) and then the injured employee gets to strike two qualified physicians (likely the two selected by the employer). Hence, it is extremely unlikely that there will be ultimate agreement as to the selection of a qualified physician. The only thing guaranteed is that the parties will be forced to engage in a costly and time-consuming procedure that will lead to no meaningful or beneficial outcome for the parties.

**3) NAMIC believes that the current law provides the parties with effective legal protection and medical counsel.**

The current statutory approach allows each party to select a qualified physician to be involved in the medical examination process. The employer or insurer selects and pays for the qualified physician to conduct the examination and the employee has the right to retain and pay for his/her own physician to be present at the examination. This process affords the worker the opportunity to have his/her *own* medical expert involved in the process. The proposed mutual selection process would require the retention of a mutually agreed upon qualified physician who could end up being placed in a role where he/she could be confronted with a professional conflict of interest.

**4) NAMIC is also concerned that the proposed amendments would improperly hinder employers or insurers in their efforts to reasonably manage medical costs.**

Current law allows an employer or insurer, who is dissatisfied with the progress of the worker's medical treatment to appoint a physician to examine the injured worker and report to the employer or insurer. If the employer remains dissatisfied, the medical report may be forwarded to the director for consideration. This is a reasonable and appropriate way for an employer or insurer to make sure that the injured worker is receiving beneficial medical care so that the injured worker may return to work and his/her pre-injury life in a timely manner. The proposed amendments to the statute would prevent the employer or insurer from being able to engage in this type of reasonable claims supervision, without having to go through a time-consuming and costly administrative process where the employer or insurer would have to demonstrate the need for a follow-up examination. Pursuant to the proposed amendments, if the Director eventually grants a second examination, the employer or insurer would need to go back to the ineffective mutual selection of a qualified physician process outlined in the proposed amendments. For all practical purposes, it would be near-impossible for an employer or insurer to be able to secure a timely and cost-effective follow-up examination of the worker's medical treatment.

The proposed amendments to the statute also have a number of other provisions that are likely to increase the cost of the workers' compensation system. For example, the proposed amendments would allow for the selection of an out of state physician if the worker does not reside in the state of Hawaii. Pursuant to the proposed regulation, the employer or insurer is solely responsible for the cost of the medical examinations, so the allowance of the retention of an out of state physician could be a workers' compensation insurance rate cost-driver. Additionally, the proposed amendments prevent the independent medical examination and the permanent impairment rating examination from being performed together in a single medical examination, even if such an undertaking would be medically appropriate and cost-effective. The proposed amendments require that the employee consent, in writing, prior to the scheduling of the examination of the final independent selected physician in order for the two examinations to be administered at the same time. This type of administrative requirement will only create needless conflict, delay, and expense for the parties.

In closing, NAMIC is concerned that the proposed legislation will turn a straightforward medical examination process into a convoluted procedure, where costly conflict and needless administrative delays will burden the system to the detriment to the employer, WC insurer, and injured worker.

Thank you for your time and consideration. Please feel free to contact me at 303.907.0587 or at [crataj@namic.org](mailto:crataj@namic.org), if you would like to discuss NAMIC's written testimony.

Respectfully,



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