

Hawaii State Legislature
House Committee on Consumer Protection and Commerce
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

February 22, 2016

Filed via electronic testimony submission system

RE: HB 2017, Treatment Plans - NAMIC's Written Testimony in Opposition to Legislation

Dear Representative Angus L.K. McKelvey, Chair; Representative Justin H. Woodson, Vice-Chair; and honorable committee members:

Thank you for providing the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to your committee for the February 22, 2016, 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, with more than 1,400 member companies representing 40 percent of the total market. NAMIC supports regional and local mutual insurance companies on main streets across America and many of the country's largest national insurers.

NAMIC member companies serve more than 170 million policyholders and write nearly \$225 billion in annual premiums. Our members account for 54 percent of homeowners, 43 percent of automobile, and 32 percent of the business insurance markets. NAMIC has 75 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 member companies and the policyholders they serve and foster greater understanding and recognition of the unique alignment of interests between management and policyholders of mutual companies.

The proposed legislation states:

(b) A treatment plan *shall be deemed received* by an employer when the plan is sent by facsimile, the Internet, or secure electronic mail with *reasonable evidence*, including automatic electronic receipt, showing that the treatment plan was received. (c) A treatment plan *shall be deemed*

accepted if an employer fails to file with the director by facsimile, the Internet, 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 calendar days after the employer's receipt* of the treatment plan. [Emphasis added]

NAMIC respectfully submits the following statement of concerns:

1) HB 2017 imposes on employers and insurers a required medium for communications (email or facsimile transmission) that may create needless administrative and IT problems for small businesses.

The proposed legislation states that “[a] treatment plan *shall be deemed received* by an employer when the plan is sent by facsimile, the Internet, or secure electronic mail” NAMIC is concerned that this proposed requirement imposes a mandatory form of communication upon employers and insurers. Why shouldn't the employer or insurer have the right to request that the delivery of a confidential treatment plan be delivered via a medium that better conforms to the employer's or insurer's established internal administrative practices for receipt of treatment plans? If a specific treating physician or injured worker needs to deliver the treatment plan electronically or by facsimile they can work out the details of the communication with the employer or insurer directly. There is no public policy rationale for dictating a medium for communication when the parties have the ability to address their respective communications needs and limitations on a case by case basis.

2) NAMIC is concerned that the proposed legislation is likely to create legal disputes over when the insurer received receipt of the treatment plan.

First of all, there is no definition in the proposed legislation as to what is meant by “reasonable evidence”. This is likely to lead to needless litigation, whereas proof of receipt via a signed acceptance by the employer or insurer upon personal delivery or proof via certified mail, return receipt, is clear and well-established evidence of receipt. Additionally, the proposed legislation incorrectly assumes that all email systems generate an electronic receipt of delivery or that the email transmission was actually received by the employer or insurer and not collected in an automated junk mail folder or blocked by an email security firewall. Since the proposed legislation imposes a time deadline for filing a treatment plan objection, it doesn't make sense to mandate a communications medium that may not reasonably work for the employer or insurer, whose legal rights may be adversely impacted by a failed email transmission or facsimile transmission error.

3) NAMIC is concerned that the proposed legislation creates an unclear and inappropriate legal presumption of receipt of a treatment plan and acceptance of the treatment plan.

HB 2017 uses the phrase “shall be deemed”, but the proposed legislation doesn't define what is the precise legal meaning of the word “deemed”. Does it mean “rebuttably presumed” or “conclusively presumed”?

If the word “deemed” is intended to connote “conclusively presumed”, NAMIC is concerned that the proposed imposition of a legal presumption that denies the employer or insurer the right to offer evidence that the insurer did not, in fact, receive the treatment plan is patently unfair and is likely to lead to costly litigation and facilitate workers’ compensation fraud, which could adversely impact affordability of WC insurance.

4) NAMIC is concerned that the proposed *seven calendar day* objection deadline from receipt of treatment plan could adversely impact an insurer’s ability to thoroughly evaluate a proposed treatment plan to the detriment of injured workers.

Providing injured workers with timely *and* appropriate medical treatment is of great importance to employers and insurers. NAMIC is concerned that the seven calendar day deadline could needlessly hinder insurers in their ability to properly and comprehensively evaluate medical treatment plans in cases involving a complex medical diagnosis and/or an extensive medical/rehabilitation treatment program. Therefore, NAMIC recommends that the bill sponsor and committee work with insurers to create a deadline that is practical and workable for all interested parties. NAMIC also suggests that the proposed legislation also specifically provide for a process by which an insurer may request a reasonable extension of time in cases where the injured worker’s medical treatment plan proposal requires additional medical review time. Finally, NAMIC respectfully requests that any deadline adopted be based upon the standard five *business days* work week that is customarily used for calculating filing deadlines.

5) The proposed legislation is unnecessary and overly restrictive.

Although NAMIC appreciates the importance of providing employers, insurers, treating physicians and injured workers with the option of being able to use modern technology to communicate and transmit information, we are opposed to mandates like the one proposed that unnecessarily limit freedom of choice.

Thank you for your time and consideration. Please feel free to contact me at 303.907.0587 or at crataj@namic.org, if you would like to discuss NAMIC’s written testimony.
Respectfully,



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