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3601 Vincennes Road, Indianapolis, Indiana 46268
Phone: 317.875.5250 | Fax: 317.879.8408

www.namic.org

122 C Street N.W., Suite 540, Washington, D.C. 20001
Phone: 202.628.1558 | Fax: 202.628.1601

Hawaii State Legislature
House Labor and Public Employment Committee

March 13, 2017

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RE: SB 857 SD1, WC: Prompt Pay - NAMIC's Written Testimony IN OPPOSITION

Dear Representative Aaron Ling Johanson, Chair; Representative Daniel Holt, 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 March 14, 2017, public hearing. Unfortunately, I will not be able to attend the public hearing, because of a previously scheduled professional obligation. NAMIC's written comments need not be read into the record, so long as they are referenced as a formal submission and are provided to the committee for consideration.

The National Association of Mutual Insurance Companies (NAMIC) is the largest property/casualty insurance trade association in the country, with more than 1,400 member companies. NAMIC supports regional and local mutual insurance companies on main streets across America and many of the country's largest national insurers. NAMIC members represent 40 percent of the total property/casualty insurance market, serve more than 170 million policyholders, and write nearly $225 billion in annual premiums. NAMIC has 84 members who write property/casualty/workers' compensation in the State of Hawaii, which represents 28% of the insurance marketplace.

Although NAMIC members appreciate the importance of providing injured workers with timely medical diagnostic and treatment care, worker's compensation claims adjusting often takes time, especially if the injured worker is unwilling or unable for medical reasons to provide the employer and the workers' compensation carrier with prompt information necessary for the insurer to make a determination as whether the claim is compensable, the injuries are work related, and the initial medical treatment is reasonable and consistent with customary medical care and pricing.

NAMIC is concerned that the proposed legislation places greater emphasis upon speed over accuracy in the claims adjusting process. Naturally, employers and workers' compensation insurers want the injured worker to be treated quickly so as to elevate their pain, prevent exacerbation of the worker's medical injuries, and promptly start them on the road to medical recovery and timely return to gainful employment. However, a "rush to claims decision-making"

is not in the best interest of injured workers, employers, the worker's compensation system, and even treating medical providers.

NAMIC has the following concerns with the proposed legislation:

1) In regard to the new proposed provision, "§386 – Payment by employer; duty to service provider; disagreement with service provider; resolution procedures", NAMIC is concerned with this title, because it arguably creates a legal duty of care owed to the medical provider by the employer and workers' compensation carrier.

Employers have workers' compensation act legal duties to their workers and workers' compensation insurers have contractual and statutory legal duties to the employers they insurer. Neither employers nor insurers owe a legal duty, nor should they, to the medical provider (a professional services vendor). Creating an independent legal duty of care owed to the medical provider by the employer or insurer could create a serious conflict of interest problem that could ultimately be detrimental to the injured worker.

2) NAMIC is concerned with the proposed provision that states, "b) The employer shall not controvert a claim for services: (1) Without reasonable cause; or (2) While the claim is pending investigation."

The problem with this provision is that it would require an insurer to make payment for medical services before the claim has been fully evaluated as to whether workers' compensation coverage is applicable and/or the injuries were caused by the work related incident. Payment should only be required once the workers' compensation statutory duty has been accepted by the employer/insurer or the facts of the case have been properly evaluated by the employer/insurer. The proposed payment requirement is a classic "put the cart before the horse."

NAMIC members appreciate and share the bill sponsor's desire to make sure that claims processing doesn't needlessly drag on to the detriment of the injured worker. Employers and insurers share this public policy desire and also have an economic incentive to get the claim adjusted in a timely manner. The more claims adjusting time invested into each claim, the more administrative expenses there are for the insurer. Claims adjusting delays are expensive and problematic for insurers, so they try to expedite the resolution of claims. However, life is complex, and work related injuries may be complex, factually and/or legally, in regard to issues of "scope of employment", whether the worker's injures are in fact work related, and whether the proposed medical treatment is reasonable and medically appropriate.

Additionally, NAMIC is concerned that the bill does not define what "without reasonable cause" means. Such a concept is rife with potential for differing opinions as to what it specifically entails and requires from the insurer. Since SB 857 imposes a very rigid payment/contest disputed bills deadline, creates "automatic liability" for an insurer if the medical service is not contested within 30 days of insurer receiving medical bill, and imposes financial penalties on the insurer, NAMIC believes that it makes sense from an administrative due process standpoint for the bill to define what is meant by "without reasonable cause".

3) NAMIC is concerned with the following provision in the proposed legislation:

"In the event of reasonable disagreement, the employer shall pay for all acknowledged charges and shall notify the provider of the denial of any payment including the reason for the denial within thirty calendar days of receipt of a bill *or notification of services rendered* and provide **a** copy of the denial to the claimant." [Emphasis added]

NAMIC is concerned that the "or notification of services rendered" is likely to create confusion as to when the payment or objection deadline begins. Specifically, what does "notification" mean? Could an informal oral communication by the injured worker to the employer that he had received medical treatment be construed as "notification"? NAMIC believes that any payment or objection deadline should be based on a clear and easily determined activity, like the insurer's or employer's receipt of a medical services invoice.

Additionally, NAMIC believes that the thirty days deadline is unworkable and impractical, and likely to lead to needless conflict between the interested parties and force insurers and employers to deny certain "rushed-through" medical charges so as not to become "automatically liable" for them as a result of failing to formally contest them within the abbreviated response deadline.

4) NAMIC believes that the following suggested provision would deny an insurer or employer with important administrative due process protections:

"The director shall review the positions of both parties and render an administrative decision *without hearing.*" [Emphasis added].

Why should the insurer or employer be denied the right to a hearing on the director's decision, especially when a $1,000 penalty, called a "service charge" in the bill, could be imposed upon the party for failing to negotiate "in good faith", whatever that nebulous legal standard actually means?

5) NAMIC believes that the July 1, 2017, effective date would create unnecessary administrative costs and burdens for insurers and employers. NAMIC believes that insurers should be granted a year from enactment of the bill for proper implementation of the law and the new prompt payment compliance requirements. Therefore, NAMIC respectfully requests a July 1, 2018 effective date.

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,

Christian John Rataj, Esq.
NAMIC Senior Director – State Affairs, Western Region