

Hawaii State Legislature

February 8, 2017

COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

Senator Rosalyn H. Baker, Chair
Senator Clarence K. Nishihara, Vice Chair

COMMITTEE ON JUDICIARY AND LABOR

Senator Gilbert S.C. Keith-Agaran, Chair
Senator Karl Rhoads, Vice Chair

Filed via electronic testimony submission system

**RE: SB 253, WC Medical Examination Physician Selection - NAMIC's Written
Testimony in Opposition**

Thank you for providing the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to your committee for the February 10, 2017, public hearing. Unfortunately, I will not be able to attend the public hearing, because of a previously scheduled professional obligation.

The proposed legislation states:

If the employer and the employee cannot agree on a physician to perform the independent medical examination or permanent impairment rating examination, the employer or employee may request in writing that the physician be appointed by the director. Within seven calendar days of the receipt of request, the director shall appoint from the director's list of qualified physicians, a physician licensed in a relevant medical specialty, licensed to practice in Hawaii, willing to undertake the examination, and paid for by the employer.

NAMIC respectfully submits the following statement of concerns with the proposed amendments to the statute:

1) SB 253 will create an unnecessary administrative cost and burden for insurance companies and require the Director to needlessly intervene in the IME process.

NAMIC is concerned that the proposed legislation will lead to routine disputes over the employer's or workers' compensation insurer's selection of an IME physician, because trial lawyers will use this as a litigation strategy to get the Director to intervene in the IME process. NAMIC is concerned that this will create unnecessary additional work for the Director, delay the selection of an IME physician, and increase claims administrative costs.

2) NAMIC is concerned that the proposed requirement that, “the selection of the examining doctor shall be by mutual agreement” will needlessly delay the IME process to the detriment of the injured workers, increase the IME costs for insurers and employers, and make the IME process unnecessarily contentious.

Policyholders already possess the legal right to have the IME reviewed by a doctor of their selection, if they want to contest the insurer’s IME doctor’s medical assessment. Therefore, the proposed requirement that the IME doctor be selected by “mutual agreement” (whatever that means procedurally) doesn’t really provide the policyholder with any new consumer protection. The only thing it does is make the insurance claims process more complicated and protracted.

Moreover, the proposed “mutual agreement” selection requirement could create unintended professional liability and ethical duty problems for medical professionals. When the insurer retains the IME doctor and the injured worker retains his own doctor, the ethical and professional duties of the respective medical professionals are quite clear. The proposed “mutual agreement” selection requirement makes the physician’s duties unclear to the detriment of both parties and the physician.

3) NAMIC is concerned that the proposed legislation will adversely impact an insurer’s ability to secure a timely and accurate medical evaluation and the injured worker’s ability to secure prompt medical treatment.

The proposed legislation states, that “if no agreement is reached, the selection shall be submitted to the Director ...” However, the proposed legislation does not address what criteria the Director will use in selecting a particular IME physician, or the process for a party to contest said selection.

If a party wants to contest the selection of a particular IME physician by the Director, a resolution of that dispute would need to be resolved *before* any IME may be conducted. Therefore, the insurer could be hindered in its ability to comply with its regulatory duty to promptly investigate and settle claims, and will be prevented from securing timely information about the injured worker’s medical diagnosis. Additionally, this new IME selection process, especially in situations where a party is contesting the Director’s IME physician selection, could end up delaying the injured worker’s ability to secure timely medical treatment.

In closing, NAMIC believes that SB 253 is unnecessary, and likely to create unintended adverse consequences for injured workers, impose needless requirements on employers and insurers that will be insurance rate cost-driver for the workers’ compensation system, and turn a standard medical evaluation claims process (IME) into a costly, complicated, and contentious procedure.

For the aforementioned reasons, NAMIC respectfully asks the committees to **VOTE NO on SB 253.**

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,

A handwritten signature in black ink, appearing to read "Christian John Rataj". The signature is fluid and cursive, with the first name "Christian" being the most prominent.

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