

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

August 19, 2013

Conference Room 436 - No. 1 Capitol District Building, Honolulu, Hawaii

- I. **CALL TO ORDER:** Chair Shubert-Kwock thanked everyone for attending the changed meeting schedule, and called the meeting to order at 9:32 a.m., with a quorum present.

MEMBERS PRESENT:

- Chu Lan Shubert-Kwock
- Anthony Borge
- Kyoko Kimura
- Craig Takamine
- Mary Alice Evans / David Sikkink

ABSENT MEMBERS:

- Leslie Mullens
- Barbara Bennett
- Howard Lum

STAFF: DBEDT

Dori Palcovich

Office of the Attorney General

Margaret Ahn

II. APPROVAL OF JUNE 19, 2013 MEETING MINUTES

Ms. Evans made a motion to adopt the June 19, 2013 minutes as presented, Vice Chair Borge seconded the motion, and the Board members unanimously agreed.

Ms. Evans introduced Mr. David Sikkink, Administrator of DBEDT's Foreign Trade Zone. Mr. Sikkink is a DBEDT designated voting member for this Board and has been asked to fill in today due to Ms. Evans' need to leave the meeting early.

III. NEW BUSINESS

- A. Amendments to HAR Title 12 Chapter 15-90 Hawaii Workers' Compensation Medical Fee Schedule and Exhibit A (DLIR)

Chair Shubert-Kwock welcomed DLIR Director Dwight Takamine who introduced his staff members in attendance, Mr. Royden Koito, Acting Administrator, Mr. Clyde Imada, Ms. Elienne Yoshida, Ms. Siriporn Rolseth, and Mr. William Kunstman. Director Takamine disclosed that there is no financial conflict with board member Craig Takamine, who is a relative of Director Takamine's. Director Takamine explained that the Hawaii Workers' Compensation law is one of the laws that DLIR administers. Specifically, 386-21(d), Hawaii Revised Statutes (HRS), provides the framework for workers' compensation fee schedules and requires the DLIR director to update the fee schedules every three years, annually, or as required. The proposal in front of this board reflects over 200 adjustments to the current billing codes for workers' compensation.

It was explained that there have been growing difficulties of injured workers' accessibility to medical assistance. Part of this difficulty relates to the medical fee schedules that, by law, fixes the amount of medical reimbursement the physicians receive for specific medical treatments. To counter this, the HRS as noted, also allows DLIR to make adjustments to the medical fee schedule. Director Takamine explained that over a period of time, many physicians have expressed concern over the economics of providing medical services to injured workers. Legislation, although not passed, had been introduced at the State legislature that would increase the reimbursement rates.

Beginning in January 2013, Director Takamine met with interested parties to discuss increasing fees for frequently used procedure codes. In determining whether to amend the fee schedule, DLIR also conducted a survey of the major prepaid health care plan contractors. In March 2013, DLIR completed its survey and came up with a total of 1,067 codes, which is 288 codes less than the 1,355 codes in the 2011 Exhibit A. The fees for 714 codes will remain unchanged in the proposed Exhibit A. The overall average percentage change for all codes between the 2011 Medical Fee Schedule and the proposed 2014 Medical Fee Schedule, which excludes dental codes, results in a 3.9% increase. An assessment by the National Council of Compensation Insurance (NCCI), requested by DLIR, reported that an overall increase in workers' compensation costs is expected to be 1.6%. If NCCI's assumptions for medical costs are applied to personal injury protection benefits, then the maximum impact will be an increase of 3.2%.

In reviewing the trend in workers' compensation premiums, from 2005 to 2013, the rate decreased by a total of 55.8%. It was noted that many of the medical professionals that are allowed to charge higher fees are also either small businesses or part of the small business industry that would benefit from the changes in Schedule A. However, while some employers may have to pay a higher premium cost for workers' compensation and no fault coverages, some small businesses in the medical subsector may be affected positively. When the Medicare rates drop or increase, there is a corresponding drop or increase in the workers' compensation rates. However, Director Takamine stated that reimbursement rates of medical providers have failed to keep pace with the higher costs of medical care, leading some physicians to opt out of providing treatment to injured workers in the workers' compensation system.

Physicians and other providers of services who treat injured workers would be impacted by an overall increase of 1.6% workers' compensation system costs in Hawaii along with a maximum impact on personal injury protection costs to increase by about 3.2%. It was discussed that physicians may inflate the medical premiums when they are aware that a workers' compensation claim is in issue. Director Takamine responded by stating that there is a doctor's shortage, not only on the neighbor islands, but in the whole country, and in particular, regarding specialists. In regards to workers' compensation fraud, it is handled in the law, as there are provisions that will cancel out all benefits of anyone found cheating or abusing the system; he also stated that there is integrity of the process.

Several testifiers provided commentary to the proposed rules and workers' compensation medical fee schedule. Some comments inferred that the system in Hawaii was broken, and that, in the past, many physicians practicing in Hawaii had to move away because they could not afford to live here. Although employers want the best for the injured workers,

there is overall concern that more doctors are needed to participate in the system. The testifiers indicated general support of the proposed changes to the fee schedules and codes. One testifier noted that in January 2013, Senator Ige ordered a survey, with results to be provided to Director Takamine by June of 2014; this is intended to assist in assessing what the overall reimbursements should be.

Vice Chair Borge made a motion to recommend to the Governor that the proposed rules proceed to the Governor's office to go out to public hearing. Ms. Evans seconded the motion, and the Board members unanimously agreed.

B. Proposed HAR Title 11 Chapter 50 Food Safety Code, and Repeal of Title 11 Chapter 12 Food Establishment Sanitation (DOH)

Mr. Peter Oshiro, Environmental Health Program Manager from DOH's Sanitation Branch, presented the board members with a power point presentation describing the *New Hawaii Food Code*. He explained that the proposed rules are intended to update the existing rules governing food establishments in the State of Hawaii based on the 2009 United States Food and Drug Administration (FDA) Model Food Code. Further, the proposal is expected to better protect the health of the residents and visitors of Hawaii through the adoption of the most current science-based and nationally-recognized food safety regulations.

Mr. Oshiro explained that the Sanitation Branch's overall mission is to promote and maintain a sanitary and healthful environment, protect residents and visitors by conducting inspections of food service establishments, issue permits, and coordinate the Food Safety Consultation and Education Program. One of the challenges facing the State is that Oahu's inspector-to-food-establishment ratio is 644, whereas the FDA's recommended ratio is 150 food establishments per inspector; Maui's ratio is 550, Kauai is 228, and the Big Island is 239 per inspector. As a result of Act 176, SLH 2010, however, five new sanitarian positions and four vacant positions will be filled by the second or third quarter of fiscal year 2013.

Statewide, there are 10,044 food establishments with 1,433 inspections performed due to complaints; of those complaints, 127 resulted in food-borne illness. On Oahu, there are 3,457 routine inspections performed with 1,773 follow-up inspections. Of those, there were 6,351 violations; 3,182 were major violations. The benefits of the rule changes included raising food establishment permit fees from \$46 to \$200 annually, increasing revenues from \$445,000 to \$1.8 million annually, increasing inspections to be consistent and in compliance with food safety regulations, reducing and/or eliminating food borne illness risk factors identified by the FDA, reducing serious illnesses, hospitalizations and fatalities of food borne contamination, and reducing the number of follow-up inspections.

It was stated that all retail food establishments, restaurants, liquor establishments, coffee houses, schools, bakeries, markets, etc., will be required to post a placard once issued by the Sanitation Branch. Such placards have a conspicuous wording of "pass," "conditional pass," or "closed." When an establishment passes inspection, they will receive a reward placard showing, "Excellence in Food Safety."

Most notably is that the impact of the proposed rules on the State of Hawaii's general fund is \$0. This is because raising the current permit fee to an average of \$200 annually for all

of the establishments would generate approximately \$2 million per year. For an average restaurant that is open 6 days a week and serves 50 meals per day, the cost equates to 300 meals/week times 52 weeks times an increase of one cent per meal equals \$156; this would cover the increase in fees. Upon hearing the presentation, Mr. Borge stated the fees and rate structure were good; Mr. Takamine agreed and commended DOH for the proposed rule amendments.

Chair Shubert-Kwock thanked him for attending this meeting noting that she realized there are some divisions and branches in the State that are still unfamiliar with this Board's purview to review administrative rules that impact small business statewide.

Vice Chair Borge made a motion to recommend that the Board approve the request to go out to public hearing. Mr. Takamine seconded the motion, and the Board members unanimously agreed.

C. Amendments to HAR Title 16 Chapter 88 Naturopaths (DCCA)

Ms. Candace Ito, Executive Officer at DCCA, stated that the main purpose of the amendments is to delete the requirement for the homeopathy examination. Up until February 2007, Part II of the Naturopathic Physicians Licensing Examination consisted of eight parts and three separate add-on examinations (minor surgery, acupuncture and homeopathy). After February 2007, the professional testing agency administered a new integrated Part II of the examination and the separate examination on homeopathy is no longer administered. All other changes are essentially operating and housekeeping measures.

Ms. Kimura made a motion to recommend that the Board approve the request to go out to public hearing. Vice Chair Borge seconded the motion, and the Board members unanimously agreed.

D. Amendments to HAR Title 5 Chapter 31 Child Support (Department of the Attorney General)

Mr. Keith Yamanaka, Assistant Administrator from the Department of the Attorney General explained that the last update to these rules was in 1991. The current changes to the rules will allow the general public to gain a better understanding of child support services. Although in 2002 the legislature created a new set of fines, the fines had not been implemented. While the proposed rules reflect these fines, no changes to the overall processes have been made. Mr. Yamanaka added that the agency does not believe that the fines will cause a significant economic burden on small business. It was also noted that the State does not make money from the receipt of the fines; the fines are appropriated to fund the operations of the agency.

Ms. Kimura made a motion to recommend that the Board approve the request to go out to public hearing. Vice Chair Borge seconded the motion, and the Board members unanimously agreed.

E. Proposed HAR Title 13 Chapter 95.1 Island-Based Fisheries Rules (DLNR)

Mr. Russell Sparks, from the Maui Division of Aquatic Resources Office at DLNR, explained that the proposed new rules will establish new, protective fisheries regulations for certain species only on the islands of Maui and Lanai; this includes size and bag limits, and pertains to both commercial and recreational fishers. DLNR developed the proposed rules after working with the public and holding numerous statewide meetings as well as on Maui and Lanai; approximately seventy percent (70%) of the commercial fishermen were in support of the proposed rules.

The average annual number of weight of reef fish caught by recreational and commercial fishers on Maui, reef fish sales, and average Maui commercial fishing statistics from 2009 to 2012 was discussed. According to the mandatory commercial catch reports, reef fish make up a very small portion of Maui's commercially caught and sold seafood. Over the last four years, there were only nine commercial fishermen who reported sales of reef fish in excess of \$1,000, and only three with annual sales that exceeded \$10,000. It was noted that while DLNR knows who these commercial fishermen fishers are, and they should be reporting their catch, they may not sell everything they catch. As to whether these regulations have been implemented on other islands and if "seasons" could be used, Mr. Sparks explained that these rules will set up templates for all islands to use, the agencies' regulations differ from island to island.

Mr. Takamine made a motion recommending the Board approves the request to go out to public hearing. Ms. Kimura seconded the motion, and the Board members unanimously agreed.

F. Amendments to HAR Title 15 Chapter 315 Mortgage Credit Certificate Program (DBEDT/HHFDC)

Mr. Darren Ueki, Finance Manager at HHFDC, explained that changes to these rules reflect the Mortgage Credit Certificate Program (MCCP), which applies to eligible first-time homebuyers with a direct tax credit against their federal income tax liability. It is intended to make more MCCP available to more, new first time homebuyers. The amount of credit is equivalent to twenty percent (20%) of the annual interest paid on a mortgage loan. This means that 20% of the annual mortgage interest paid by an eligible first-time homebuyer on a mortgage loan will be a direct dollar-for-dollar reduction in income tax liability, while the remaining eighty percent (80%) will continue to qualify as an itemized tax deduction. There will also be an annual fee charged to participating mortgage brokers and lending institutions. Chair Shubert-Kwock, who is the owner of ABC Mortgage, recused herself from voting.

In addition to housekeeping measures, changes to the rule include the following new program fees payable by the mortgage lender to HHFDC: 1) \$250 participation fee per year, 2) \$25 application review fee per application, and 3) \$100 extension fee per application for up to 60 calendar days beyond the initial 90-day period. In response to a question about more fees being charged to the consumer, Mr. Ueki noted that HHFDC looked at fees charged across the county for best practice purposes and found that small business would

not be overly burdened with the proposed increase in fees as they are comparable and not considered exorbitant.

No action was taken due to the lack of a voting quorum as Chair Shubert-Kwock and Ms. Kimura recused themselves because of potential financial conflicts.

VI. ADMINISTRATIVE MATTERS

A. Review third draft of Board's proposed SBRRB Brochure and Evaluation Survey

Upon reviewing the proposed draft brochure and evaluation survey, changes were suggested.

Mr. Takamine made a motion to recommend that the Board approve the suggested changes, Vice Chair Borge seconded the motion, and the Board members unanimously agreed.

B. Recommendation and approval of an investigative task force to write a report regarding this Board's immediate clerical and budgetary needs for submission to the Governor and 2014 Legislature

Chair Shubert-Kwock announced that DBEDT staff has received a new computer and a printer to assist with this Board's work, of which, the Board and staff are very appreciative.

This agenda item was deferred until the next board meeting.

V. ADJOURNMENT – Vice Chair Borge made a motion to adjourn the meeting at 12:38 p.m., Mr. Sikkink seconded the motion, and the Board members unanimously agreed.

IX. NEXT MEETING – Scheduled for 9:30 a.m., Wednesday, September 18, 2013, Conference Room 436, 250 South Hotel Street, Honolulu, HI.