

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

August 17, 2016

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

- I. **CALL TO ORDER:** Chair Borge called the meeting to order at 1:03 p.m. with a quorum present.

MEMBERS PRESENT:

- Anthony Borge
- Harris Nakamoto
- Barbara Bennett
- Kyoko Kimura
- Robert Cundiff
- Nancy Atmospera-Walch

ABSENT MEMBERS:

- Garth Yamanaka
- Mark Ritchie

STAFF: DBEDT
Dori Palcovich

Office of the Attorney General
Dawn Apuna

II. APPROVAL OF July 20, 2016 MINUTES

Mr. Cundiff made a motion to accept the July 20, 2016 minutes, as presented. Vice Chair Nakamoto seconded the motion, and the Board members unanimously agreed.

III. NEW BUSINESS

- A. Discussion and Action on Amendments to HAR Title 12, Chapter 15, Hawaii Workers' Compensation Medical Fee Schedule, and Exhibit A, Workers' Compensation Supplemental Medical Fee Schedule, promulgated by Department of Labor and Industrial Relations (DLIR)

Ms. JoAnn Vidinhar, Administrator at DLIR, explained that the first change to Chapter 15 applies to Sections 32 and 34, which allow physicians and service providers, other than physicians, the option to transmit treatment plans by mail or facsimile to an address or facsimile number provided by an employer. These changes will implement Act 101, which was passed by the 2016 State legislature; Act 101 also added a new section to the workers' compensation law, entitled "Treatment Plans."

The second proposed change will amend Section 90 as well as the billing codes in Exhibit A, as Section 386-21(c), HRS requires the DLIR director to update the fee schedule every three years or annually. Billing codes allow for the State Auditor to assist the DLIR director in the

administrative adjustment of the workers' compensation medical fee schedule. Ms. Vidinhar noted that DLIR followed the Auditors' recommendation by using frequently transacted Current Procedural Terminology (CPT) and Current Dental Terminology (CDT) codes, which represent medical and dental services that were delivered and paid within, at least, two of a three-year period.

In January 2016, DLIR sent surveys to health care plan contractors and dental insurers requesting schedules of all maximum allowable medical and dental fees. The surveys helped DLIR with the resulting proposed total of 1,149 codes, 700 new CPT codes, and a new category "Pathology and Laboratory" with 217 CPT codes. The overall change reflects a 4.1% increase in surgery, 7.5% increase in radiology, 0.3% decrease in medicine, 9.3% increase in dental, and 0.9% increase in evaluation and management. Mr. Leonard Hoshijo, DLIR Deputy Director explained that the impact on physician payments will result in a negligible decrease in Hawaii's overall workers' compensation costs.

In regards to small businesses, there may be an impact if the workers' compensation and no-fault insurance premiums are affected, and if the changes in costs are passed down to the consumers. Vice Chair Nakamoto noted that the rates on the fee schedule do not reveal a great impact. There may potentially be a decline of providers due to patients in need of specific care and who would be unable to receive the needed care as physicians are able to opt in or out as a participant. Ms. Vidinhar stated that it is the priority of DLIR's director to provide accessibility to patients and to have a balanced and fair process.

Ms. Kimura made a motion to support the amendments for public hearing. Vice Chair Nakamoto seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on Amendments to HAR Title 19, Chapter 44, Rules Relating to Services and Procedures, Charges, Tools, and Fees, promulgated by Department of Transportation (DOT)

Chair Borge stated that while the proposed amendments reflect increases in the wharfage fees and fuel costs, DOT has stated there is no impact to small business. However, it would appear that the fees the larger businesses are charged would likely get passed down to the smaller businesses, which would be an indirect impact to small businesses. In response, Administrator, Mr. David Yogi and Ms. Dre Kalihi, Revenue Enhancement Manager, from DOT's Harbors' Division, discussed the proposed rule amendments that encompass Port Hawaii and the Harbors Modernization Plan (HMP).

Ms. Kalihi explained that when DOT adjusts its wharfage rates, the large businesses will pass the increases onto their customers, which are the smaller businesses, but there is no correlation with DOT's increases and the increases the larger businesses may pass onto its customers. She also explained that the "ocean" importing of goods is Hawaii's lifeline, as Hawaii imports 80% of its goods; 98.6% moves through Port Hawaii within the Harbors Division, which is self-funded. In fiscal year 2015, \$123 million was needed in revenue to sustain DOT Harbors Division, with 76% of revenue or \$93.6 million derived from wharfage rates.

Also indicated was that the rule amendments represent wharfage computation, waiver of wharfage, transshipment of cargo, wharfage rates, cement in bulk and liquids passing through pipelines and rates, wharfage rates for fuel, and the incremental increases to wharfage rates and passenger fees. The primary impact of the rate increase represents large shippers and shipping agents (Matson, Pasha Hawaii, and Young Brothers); cruise lines (NCL, Princess, Carnival and Celebrity), fuel companies (Hawaii Gas, Hawaii Independent Energy), and pipeline users (Hawaiian Cement).

By 2020, \$202 million in revenue will be needed for Harbor's operations and capital improvements; plus, a total of \$850 million is needed for the HMP. It was noted that all of the collected fees, tariffs, and rent are reinvested into the Port Hawaii system, which encompasses the three harbors in Maui, two on Kauai, two on Oahu, and two on the Big Island. Therefore, Harbors Division must balance the costs of needed port upgrades while minimizing cost increases for consumers; this has lead the Harbors group to explore new revenue-generating alternatives to fund upgrades. The proposed rate increases are as follows: 17% in 2016; 15% increase in 2017; 15% increase in 2018; and 3 increase or CPI rate in 2019.

In addition, Mr. Yogi indicated that since HMP was first put into place, the cost for infrastructure improvements increased dramatically (i.e., doubled) due to coral mitigation and other impacts, which has caused an increase in the funds needed. Thus, Harbors Division is attempting to raise its rates in a very efficient manner, which is expected to take six to eight years, and to finance the improvements through cash flow.

Ms. Kimura made a motion to support the amendments to proceed to public hearing. Vice Chair Nakamoto seconded the motion, and the Board members unanimously agreed.

C. Discussion and Action on Proposed New Title 23, Chapter 6, Public Transit Supportive Services – Car Sharing Program, promulgated by Department of Transportation Services, City and County of Honolulu

Discussion leader, Mr. Cundiff, stated that this new proposed rule was generated from an ordinance regarding a program using the City and County of Honolulu's stalls for car sharing organizations throughout the state to help complement the current transportation available to the public.

Mr. Mark Garrity, Deputy Director at the Department of Transportation Services, explained that the ordinance, which was passed by City Council a few years ago to implement a car sharing program in Honolulu, was based on similar programs in other cities and states. Car sharing is a type of short-term car rental that allows members of a car-sharing organization to rent a car for a very short period of time; i.e., an hour or even minutes.

The intention of the car sharing program is to provide more options for people who may not have a car or accessibility to a car; overall, it is a supplement to public transit and an urban life-style that is less dependent of people owning a car. The program allows the City to allow up to fifty (50) parking stalls in public off-street parking lots around the city. Up to 175 permits will be offered to car-sharing organizations where cars would be parked on the

streets via “one-way rental.” The cars are usually Smart cars and parked in urban neighborhoods which is relatively easy way for people to get around.

The potential small business impact would be to car rental companies and taxi cab owners. Some of the car rental companies, such as Enterprise, have their own versions of car-sharing. There may also be an impact to the general public when parking spaces are needed. The overall fees are intended to reimburse the City for its costs, so the fiscal impact is negligible. Mr. Garrity stated that the other islands could pass their own legislation for car sharing programs as the State passed legislation allowing car-sharing programs for all four counties. Chair Borge noted that the information explained in the impact statement was written well, and receiving input from the stakeholders was very important.

Mr. Cundiff made a motion to support the amendments for public hearing. Second Vice Chair Bennett seconded the motion, and the Board members unanimously agreed.

D. Discussion and Action on the Small Business Statement After Public Hearing of Proposed New Title 23, Chapter 6, Public Transit Supportive Services – Car Sharing Program, promulgated by Department of Transportation Services, City and County of Honolulu

See also Section IV. C.

Mr. Cundiff made a motion to support the amendments, after the public hearing, for adoption by the Mayor. Ms. Kimura seconded the motion, and the Board members unanimously agreed.

IV. ADMINISTRATIVE MATTERS

A. Update, Discussion and Action on Proposed Amendments to Chapter 201M, HRS

Deputy Attorney General Apuna stated that although there was interest in changing the “substantial financial interest,” it is part of the State’s Ethics Code and not part of this Board’s statute; therefore, it would be extremely difficult for this Board to make any changes to it due to the Code’s high standards.

The members reviewed the proposed changes, which are mostly housekeeping measures. The changes include modifying the definition of “small business,” which corresponds to the “small business” definition taken from existing DBEDT HAR Title 15, Chapter 3, Capital Access Program, and clarifying this Board’s power when reviewing administrative rules that impact small business, which was taken from the law of Wisconsin’s Small Business Regulatory Review Board.

Another change includes increasing the number of Board members from nine to eleven with names to be submitted by the Board; this is expected to provide the Board with more representation as it gives the members an ability to nominate its own members. The fourth change is for clarification purposes as to when reporting by the agencies is required for submission to this Board.

Mr. Cundiff made a motion to accept all proposed modifications to the Board's statute. Ms. Kimura seconded the motion, and the Board members unanimously agreed.

Mr. Mark Perriello, President of the Kauai Chamber of Commerce and guest of Second Vice Chair Bennett, was introduced by Chair Borge. Mr. Perriello was in attendance because he is in the process of registering with the Board's and Commission's Office to become a member of this Board. He has lived on Kauai for a year; prior to this he lived in Washington D.C., where he worked under President Obama in the White House as the Director of Diversity. He also recently ran the American Association of People with Disabilities.

B. Update on this Board's Upcoming Advocacy Activities and Programs in accordance with the Board's Powers, under Section 201M-5, HRS

- 1) iPads/Computer - The members' iPads are on order but no date for receipt is known. When received, a training class will be provided to the members.
- 2) Regulation Review Card – There have been no requests yet from the regulation review card. DBEDT's staff will announce the review card in the next e-newsletter which is expected to be sent out the end of the week. Announcements in Twitter and Facebook are also expected to go out soon.

Chair Borge encouraged the members to go to the Board's website and view the one-page regulation review card; he noted that the link is very accessible as it is located on the top of the home page. DBEDT staff is planning to draft a short article about the Board and the regulation review card for the SBA's *Resource Guide for Small Business*.

C. Discussion of the upcoming U.S. Small Business Administration's "Regulatory Enforcement Fairness Roundtable" on August 23, 2016

Chair Borge stated that the Federal Ombudsman will be in attendance at the SBA's Regulatory Fairness Roundtable to hear from Hawaii small businesses and small business organizations about regulatory issues concerning businesses. If any members are able to attend, please do so; DBEDT staff is planning to attend.

V. **NEXT MEETING** – The next meeting is scheduled for Wednesday, September 21, 2016, in Conference Room 436, 250 South Hotel Street, Honolulu, Hawaii, at 1:00 p.m.

VI. **ADJOURNMENT** – Mr. Cundiff made a motion to adjourn the meeting and Ms. Kimura seconded the motion; the meeting adjourned at 2:52 p.m.