December 11, 2013 ~ SBRRB Meeting Checklist

Member Attendance

	Airline Preference	From	Details	Attend
Chu Lan Shubert-Kwock ✓	NA	Oahu	Parking Pass	Yes
Howard Lum ✓	NA	Oahu	Parking Pass	Yes
Craig Takamine ✓	HA	Hawaii	Parking Pass	Yes
Barbara Bennett ✓	HA	Kauai	Parking Pass	Yes
Kyoko Kimura ✓ Attained Requested Itinerary	HA	Maui	Parking Pass	Yes
Ken Director's ex officio	NA	Oahu	NA	Yes
Anthony Borge ✓	NA	Oahu	Parking Pass	Yes
~~Leslie Mullens~~ X	~~NA~~	~~Maui~~	~~Parking Pass~~	No

Pre Meeting Checklist

	X
Conference Room #436 (Confirm each month)	
Make ~~12+~~ 15 copies of rule packages for board packets - continuous	✓
Poll board attendance	✓
Prepare TAF for Director's approval - ASAP ✓ Kyoko / Barb ✓ / Craig ✓ Linda	✓✓✓
Airline booking ASAP - Linda Kyoko ✓ Barb ✓	
Draft Agenda to Chair	✓
~~Post approved agenda o~~n SBRRB website ✓ & State Calendar ✓ & Lte. Governor's Office	✓✓✓
Send Agendas to those people who requested it	✓
Mail approved agenda to board members, M. Ahn	✓
Mail board packets Tues or Wed. Dec. 4th or 5th	✓
Do	
3-4 Days prior to meeting, send DAGS an email (or fax) re: Board members parking and attending SBRRB meeting - IMPORTANT	✓

STAFF

Margaret Ahn ✓				Yes
Dori Palcovich				Yes

Post Meeting Checklist

Visitors Sign-in-Sheet – Small Business Regulatory Review Board – December 11, 2013

	Name	Title	Organization	Email	Phone
1	Nolan Hirai		Clean Air Brn.	nolan.hirai@doh.hawaii.gov	586-4200
2	Mike Madsen	Env. Eng.	Clean Air Branch	michael.madsen@doh.hawaii.gov	586-4200
3	Dwight Takamine	Director	DLIR		586-8850
4	Walter Kawamura	DCD ADMIN	DLIR		586-[illegible]
5	JADE BUTAY	DEPUTY DIRECTOR	DLIR		586-8850
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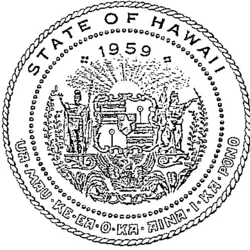


SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism
No. 1 Capitol District Bldg., 250 South Hotel St. 5th Fl., Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Tel 808 586-2594
Fax 808586-2572

Neil Abercrombie
Governor

Richard C. Lim
Director, DBEDT

Mary Alice Evans
Deputy Director, DBEDT

Members

Chu Lan Shubert-Kwock
Chairperson
Oahu

Howard Lum
Oahu

Anthony Borge
Vice Chair
Oahu

Barbara Bennett
Kauai

Leslie Mullens
2nd Chairperson
Maui

Kyoko Y. Kimura
Maui

Richard C. Lim
Director, DBEDT
Voting Ex Officio

AGENDA
Wednesday, December 11, 2013 ★ 9:30 a.m.
No. 1 Capitol District Building
250 South Hotel Street - Conference Room 436

I. Call to Order

II. Approval of November 20, 2013 Meeting Minutes

III. Old Business

A. Small Business Statement After Public Hearing for Hawaii Administrative Rules (HAR) Title 11 Chapter 60.1, Air Pollution Control (Department of Health) – Exhibit 1
B. Small Business Statement After Public Hearing for HAR Title 12 Chapter 15, Workers' Compensation Medical Fee Schedule and the Workers' Compensation Supplemental Medical Fee Schedule (Department of Labor and Industrial Relations) – Exhibit 2

IV. New Business

A. Proposed Amendments to Part II of the Rules and Regulations for Water Service Connections, Section IX - Adjustment of Bills for Undetected Underground Leaks and Unforeseen Damages (Department of Water Supply - County of Kauai) – Exhibit 3

V. Administrative Matters

A. Approve Board's final draft of 2013 Annual Report Summary to the Legislature, pursuant to Section 201M-5(f), Hawaii Revised Statutes
B. Update of Board's Fiscal Year 2015 Supplemental Budget Request
C. Status Report from Board's Investigative Committee on RegAlert, an electronic email alert system for announcement of proposed and amended administrative rules impacting small businesses
D. Chair's Report – Exhibit A
E. Delegation of authority to a board member or members to submit testimony testify at the 2014 State Legislature

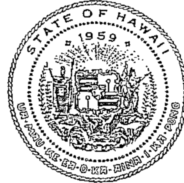
VI. Adjournment

VII. Next Meeting: Scheduled for Wednesday, January 22, 2014, at 9:30 a.m., Conference Room 436, Capitol District Building, Honolulu, Hawaii

If you require special assistance or auxiliary aid and/or services to participate in the public hearing process (i.e., sign language, interpreter, wheelchair accessibility, or parking designated for the disabled), please call (808) 586-2594 at least three (3) business days prior to the meeting so arrangements can be made.

Exhibit 1

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



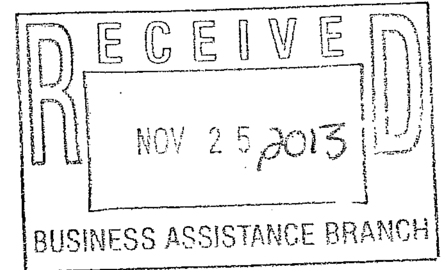
LORETTA J. FUDDY, A.C.S.W., M.P.H.
DIRECTOR OF HEALTH

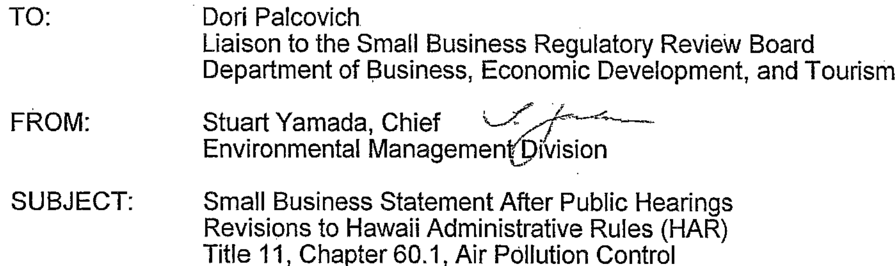
STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

13-977A CAB

November 18, 2013





TO: Dori Palcovich
Liaison to the Small Business Regulatory Review Board
Department of Business, Economic Development, and Tourism

FROM: Stuart Yamada, Chief
Environmental Management Division

SUBJECT: Small Business Statement After Public Hearings
Revisions to Hawaii Administrative Rules (HAR)
Title 11, Chapter 60.1, Air Pollution Control

Pursuant to §201M-3, Hawaii Revised Statutes, the Department of Health (DOH) is submitting its small business statement after public hearings were held on revisions to HAR, Title 11, Chapter 60.1, Air Pollution Control.

On October 19, 2012, the DOH published a notice of accepting written comments and holding public hearings (Docket No. R-3-12) in the *Honolulu Star-Advertiser, West Hawaii Today, Hawaii Tribune-Herald, The Garden Island*, and *The Maui News.* In response to a formal request, the DOH extended the public comment deadline from December 7, 2012 to January 14, 2013 and published a public notice in the aforementioned newspapers to extend the comment period. Both notices were posted on the DOH, Clean Air Branch (CAB) website over the duration of the public comment period.

In November of 2012, the DOH held public hearings on Hawaii, Oahu, Kauai, and Maui. Approximately eighteen (18) people provided oral testimony, including informal comments or questions. The following table summarizes information for the four (4) hearings:

Hearing Location	Hearing Date	Number of Persons Signed into Hearing	Testimonies and/or Comments
Hilo, Hawaii	November 20, 2012	5	1
Honolulu, Oahu	November 28, 2012	46	11
Lihue, Kauai	November 29, 2012	4	3
Kahului, Maui	November 30, 2012	6	3

Twenty-three (23) written comments were also received by the DOH during the public comment period. Written comments on the revised rules were either received by mail or e-mail.

The DOH prepared a formal written response to the oral and written comments that is enclosed for your review. A copy of DOH's response to comments will be sent to every person who submitted testimony and provided contact information.

One (1) oral and two (2) written comments were provided concerning potential impacts to small businesses. Hawaii Farm Bureau Federation, which represents many small business farmers, provided an oral comment at the Maui public hearing and another written comment. Both comments indicated that the cost of the added greenhouse gas (GHG) regulations would raise the price of fuel and electricity supplied by affected facilities which would be passed on to consumers, including small farmers. Written testimony from Alexander & Baldwin made a similar comment that the small business impact statement only considered impacts from emissions control requirements, reporting, and fees but did not consider the indirect costs.

The GHG rules establish a regulatory program applying to approximately twenty (20) of Hawaii's largest stationary sources with potential GHG emissions equal to or above 100,000 tons per year carbon dioxide equivalent (CO_2e). These sources have a number of options for reducing GHG emissions, and the indirect costs to small businesses from price increases in fuel and electricity due to the GHG regulations cannot be determined. If affected facilities use alternative energy sources or improve energy efficiency as a result of these regulations and similar programs, such as the Hawaii Clean Energy Initiative and Hawaii's Renewable Portfolio Standard, the price of fuel and electricity could go down.

Should there be any questions, please contact Mr. Barry Ching of the Clean Air Branch at 586-4200.

BC:rkb
Enclosure

Highlights for State Greenhouse Gas (GHG) Rules

Note: State GHG Rules implement goals of ACT 234, Hawaii Session Laws, 2007. Affects existing major covered sources with potential GHG emissions equal to or above 100,000 short tons per year of CO_2e, except municipal waste combustion operations and municipal solid waste landfills.

- Initiates GHG rules for implementing the goals of ACT 234. Subchapter 11 is added under Hawaii Administrative Rules, Chapter 11-60.1, Air Pollution Control.

- Provisions are included and will be changed/expanded as needed for meeting Hawaii's GHG 2020 goal of reducing emissions to equal or below 1990 GHG levels.

- Statewide GHG limit set at 13.66 million metric tons (MMT) CO_2e based on 1990 levels (ICF International report for GHG Task Force). Estimate excludes aviation and international bunker fuel emissions, and includes carbon sinks. If carbon sinks are excluded, the GHG limit is 15.34 MMT CO_2e.

- Requires a GHG Reduction Plan from permitted covered sources:

  - Purpose: To establish a facility-wide GHG emissions cap for affected facilities.

  - Targets larger "existing" sources with potential emissions equal to or above 100,000 short tons per year CO_2e (approximately 20 sources). Excludes municipal waste combustion operations and municipal solid waste landfills.

  - Uses 2010 as a baseline year to establish a facility-wide cap to be achieved by January 1, 2020.

  - Establishes minimum cuts of 16% for affected facilities from 2010 baseline year for non-biogenic emissions and any biogenic nitrous oxide and methane emissions.

  - Facility-wide cap is set to equal or below the facility's total baseline GHG emission levels less biogenic CO_2 emissions.

  - Facility must justify alternate cap if the 16% calculated cap cannot be achieved. Alternate cap requires director's approval only after careful consideration of all available control options.

  - An alternate cap requires a GHG control assessment that is similar, but not identical to a best available control technology analysis for meeting GHG cap.

- Provides flexibility in meeting cap:

  - Affected facilities may partner among each other to reach GHG reduction goals.
  - Biogenic CO_2 emissions will be excluded at this time in determining compliance with the cap.

- Facility-wide cap will be incorporated into permit. Cap may be re-evaluated under specific conditions.
- Violation of the cap will be subject to enforcement action.

Highlights for State Greenhouse Gas (GHG) Rules Based on Federal Rule

Note: Federal rule affects major covered sources; some GHG requirements were included for non-major covered sources and noncovered sources.

- Generally, follows Federal GHG Tailoring Rule with the exception of:

  - Best Available Control Technology (BACT) thresholds for covered and noncovered sources. Prevention of Significant Deterioration (PSD) BACT thresholds remain the same.
  - Insignificant and exemption thresholds for GHG are added (3,500 tons per year (tpy) CO_2e for both covered and noncovered sources).
  - Requiring permit applicants to quantify both biogenic and non-biogenic GHG emissions.

- GHG major source threshold set at potential emissions ≥ 100,000 tpy CO_2e and 100 tpy of GHGs on a mass basis.

- PSD significance levels ≥ 100,000 tpy CO_2e plus other 40 Code of Federal Regulation (CFR) §52.21 thresholds, triggers major modifications and BACT review for new sources.

- PSD significance levels ≥ 75,000 tpy CO_2e plus other 40 CFR §52.21 thresholds, triggers major modifications and BACT review for existing sources.

- Covered (Title V) and noncovered source significant levels ≥40,000 tpy CO_2e, triggers BACT review.

- Outcomes of rule making decisions for regulating biogenic CO_2 emissions are uncertain. Biogenic CO_2 emissions for Title V and PSD applicability determinations will be addressed outside of HAR depending on final rule making decisions.

- Initiating the reporting of GHG annual emissions for all covered sources, and the collection of GHG annual fees from these sources to fund both the Federal and State GHG permit program:

  - Total of 12 cents/ton CO_2e (estimated); 7 cents/ton to COV and 5 cent/ton to NON
  - Biogenic and non-biogenic GHG emissions will be assessed fees

- GHG fees are required in the year the GHG rules are adopted. Fees will be based on the amount of emissions emitted in the prior operating year for which fees are due.

- Annual fees for covered sources are due in full within the first 120 days of each calendar year instead of within the first 60 days of each calendar year.

- Annual fees for noncovered sources will remain the same at $500 for each noncovered source permit held.

DEPARTMENT OF HEALTH (DOH) RESPONSE TO COMMENTS AMENDMENTS TO THE HAWAII ADMINISTRATIVE RULES (HAR)

Introduction

The State of Hawaii, DOH, has proposed amendments to HAR, Title 11, Chapter 60.1, Air Pollution Control. The main purpose of the rule amendments is to initiate the regulation of greenhouse gases (GHGs) emitted by Hawaii's stationary air pollution sources. The DOH has prepared this document in response to testimony and comments it received during the public comment period.

On October 19, 2012, the DOH published a notice of public hearing for proposed amendments to HAR, Title 11, Chapter 60.1, Air Pollution Control. In November 2012, the DOH held public hearings on Hawaii, Oahu, Kauai, and Maui. In response to a formal request, the DOH extended the public comment deadline from December 7, 2012 to January 14, 2013. Approximately eighteen (18) people provided oral testimony at the public hearings and twenty-three (23) written comments were submitted.

In drafting the rule amendments, the DOH held meetings with potentially affected sources and environmental organizations. During those meetings, the DOH informed participants of federal and state GHG requirements and shared preliminary ideas on the proposed rule amendments.

In a number of cases, the DOH has not changed its position on the proposed HAR amendments, but nevertheless seeks to provide a clear justification in response to comment. As a result of the comments received and additional research and review, the DOH has made changes on several key issues including:

1. Lowering the reduction required in the facility-wide GHG emissions cap from 25% to 16% of an affected source's 2010 emissions;
2. Requiring a public participation process as part of the DOH review of GHG Emission Reduction Plans, including requests for approval for an alternative baseline year, revised facility-wide GHG emissions cap, and all GHG control assessments;
3. Extending the deadline to submit GHG Emission Reduction Plans from nine (9) to twelve (12) months;
4. Conditionally exempting municipal solid waste (MSW) landfills with gas collection and control systems from GHG emissions reduction requirements;
5. Charging fees only after promulgation of the rules; and
6. Amending the definition of "subject to regulation" to better align with the federal definition and recent court ruling.

In preparing this response to comments, the DOH reviewed and considered all oral and written comments provided. However, the DOH did not provide a detailed response to every comment submitted. This response to comments should be viewed as

representative of general themes conveyed by each individual comment provided to the DOH. The DOH's response to comments is posted online at the Clean Air Branch website at http://health.hawaii.gov/cab/.

Background

The GHG program outlined in the proposed rule amendments was created in accordance with federal and state law requirements. Under federal law, as provided in the Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule (Title 40, Code of Federal Regulations (CFR) Parts 51, 52, 70, and 71), GHG emissions must be regulated. As a result of the Tailoring Rule, states must establish a permitting program for reducing GHG emissions. For implementing the Tailoring Rule and permitting purposes, GHGs are a single air pollutant defined as the aggregate group of six (6) gases: carbon dioxide (CO_2), nitrous oxide (N_2O), methane, (CH_4), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6). The mass amount of emissions for each of the six (6) GHGs is multiplied by the gas's associated global warming potential to determine the carbon dioxide equivalent (CO_2e) emissions. The sum of the CO_2e emissions are compared against emission thresholds for permit applicability determinations.

Under state law, as provided for in Act 234, 2007 Hawaii Session Laws, Relating to Greenhouse Gas Emissions, which was enacted in Sections 342B-71 to 73, Hawaii Revised Statues (HRS), the DOH must regulate GHG emissions. The state GHG permitting program supports the GHG emission reduction goals outlined in these state laws. The rules follow the core directives from Act 234 by proposing the following: 1) adopting the statewide GHG emissions limit of 1990 levels, or lower, by 2020; 2) establishing the principle of seeking reductions that are the maximum practically and technically feasible and cost-effective; and 3) requiring reporting and verification of statewide GHG emissions to ensure compliance. The DOH also considered recommendations from the Greenhouse Gas Emissions Reduction Task Force's Report to the 2010 Legislature. The 2010 Report included the primary recommendation that the Hawaii Clean Energy Initiative, plus other actions (HCEI+), would reduce GHG emissions to 1990 levels, as well as other recommendations to consider backstops to ensure reduction goals would be met. Moreover, Sections 342B-71 to 73, HRS, which enacted Act 234, requires the DOH to enforce air pollution regulations. Under these sections, the DOH is granted authority to control air pollutants, establish a permit program to enforce reductions, and charge fees to support the air program.

The DOH drafted the proposed rule amendments in accordance with these federal and state mandates. The revisions to the proposed rule amendments outlined here further establish the GHG program framework and include a few housekeeping changes for consistency and clarification purposes.

1. <u>Scope of Authority & Act 234</u>

The DOH has two (2) separate sources of authority, found in Chapter 342B, HRS, to promulgate rules regulating GHG emissions.

The first source of authority is based on the general authority given the Director of the DOH (Director) to regulate all air pollution in the state. The Director has general powers to regulate air pollution under Section 342B-3, HRS, and specific powers to regulate air pollution under Section 342B-12, HRS.

The second source of DOH authority to promulgate rules regulating GHG emissions is found in Subpart VI, of Chapter 342B, HRS, which incorporates Act 234, Session Laws of Hawaii 2007. Section 342B-71, HRS, established a statewide GHG emissions limit to be achieved by 2020 that is equal to, or below, the statewide GHG emission in 1990. Section 342B-72, HRS, orders the DOH to adopt rules to establish GHG emissions reduction measures to achieve the maximum practically and technically feasible and cost-effective reductions in GHG emissions in furtherance of achieving the statewide GHG emissions limit.

The DOH, in proposing these GHG rules, has reviewed and interpreted these underlying sources of authority for promulgating the GHG rules, and has determined that these proposed rules are well within the authority and jurisdiction given the DOH by the Hawaii State Legislature. As part of this authority, the Director is afforded wide discretion to determine the proper means to best affect the DOH's statutes. In view of its scope of authority, the DOH has determined that these proposed rules will help ensure that GHG limits are achieved by the time proscribed by the Hawaii State Legislature.

First, while the proposed rules apply to all regulated sources of GHG emissions, the initial GHG emissions reduction requirements apply only to a small group of stationary sources (approximately twenty-five (25) stationary sources). These twenty-five (25) stationary sources are the largest stationary source GHG emitters, representing approximately 90 percent of Hawaii's stationary source GHG emissions. Therefore, the DOH determined that focusing on regulation of GHG emissions from these affected sources would provide the largest beneficial gain. Nevertheless, the DOH will continue to assess statewide GHG emissions to determine if it will later be necessary to apply the proposed rules to other sources to meet 1990 GHG emission limits.

Second, the proposed rules subject affected sources to reductions that could take them below their actual 1990 GHG emissions levels. This is not unreasonably burdensome because Chapter 342B, HRS, established a statewide GHG emissions limit. This statewide limit can only be achieved with combined efforts from a collection of individual sources. Nothing in Chapter 342B, HRS, prevents the DOH from requiring reductions that might take an individual source below its own 1990 GHG emissions level, in pursuit of reaching the overall statewide goal. Nor does it

prevent the DOH from determining what will constitute a violation and what levels of exceedances over the GHG limits will be considered violations.

Third, the proposed rules are part of a framework that the DOH determined was necessary to ensure that DOH's statutory requirements were met. This framework is supported by directives from the GHG Emissions Reduction Task Force and its 2009 Report to the Legislature, "Work Plan for Greenhouse Gas Emissions Reductions." In the 2009 Report, the Task Force unanimously recommended a strategy of following the Hawaii Clean Energy Initiative with additional policies (HCEI+) that would meet and exceed the reduction target "providing that its elements are met on time." In addition, several supporting recommendations were made by a majority of the Task Force (seven (7) of ten (10 members, in different combinations), one of which suggested "backstop" mechanisms including DOH rules on sources and categories of sources to achieve Act 234 limits.

2. Life Cycle Assessment & Biogenics

At this time, the DOH will not incorporate Life Cycle Assessment (LCA) into the proposed rules because LCA standards and formulas have not yet been fully developed for stationary sources. Neither the U.S. Environmental Protection Agency (EPA) nor any other state agency nationwide applies LCA to stationary sources. Therefore, the DOH determined that developing and applying its own LCA would be premature at this time.

However, the DOH recognizes the merits of LCA and its applicability to alternative fuels including biogenics. The DOH also anticipates that LCA standards and formulas will be developed during the initial period when sources are preparing their GHG Emission Reduction Plans according to these proposed rules. Therefore, the DOH retains, and clarifies below, the proposed rule language providing that the biogenic GHG emissions exemption is subject to change after the EPA adopts rules on that subject. Affected sources should take this into consideration when developing their GHG Emission Reduction Plans.

For clarification purposes, the DOH makes the following changes to HAR 11-60.1-204(d)(6)(B):

> Except for fee assessments and determining applicability to this section, biogenic CO_2 emissions will not be included when determining compliance with the facility-wide emissions cap until further guidance can be provided by EPA, or the director, through rulemaking.

3. Facility-Wide GHG Emissions Cap

a. GHG Cap Change from 25% to 16%

The initial 25% GHG emission reduction percentage for the facility-wide GHG emissions cap was based on DOH's 2010 GHG emissions inventory for all of Hawaii's covered sources and the 2008 report entitled "Hawaii Greenhouse Gas Inventory: 1990 and 2007" prepared by ICF International for the Hawaii Department of Business, Economic Development & Tourism (DBEDT). The difference between the 1990 and 2007 CO_2e emissions was used to determine the reduction from the 2010 baseline year needed to achieve the1990 GHG CO_2e emissions level. The GHG emission levels of 8,930,000 metric tons CO_2e from 1990, and 10,860,000 metric tons of CO_2e from 2007, were used to represent emission levels for 1990 and 2010, respectively. The emissions levels were determined by adding CO_2e emissions among the power, waste, industrial, commercial, and residential sectors. The following equation was used to calculate the GHG reduction percentage, a_T:

$$a_T = \left(T_S^{2010} - T_S^{1990} + \left(E^{2010} + T_S^{2010} - L^{2010}\right) \times g^{10}\right) / \left(L^{2010} - E^{2010}\right)$$

where,

T_S^{1990} : 1990 state-wide total CO_2e emissions

T_S^{2010} : 2010 state-wide total CO_2e emissions

L^{2010} : DOH covered source actual CO_2e emissions from affected facilities with total potential GHG emissions greater than 100,000 CO_2e short tons per year

E^{2010} : Large DOH covered source actual CO_2e emissions exempted from reductions

g^{10} : DOH estimate for uncontrolled growth fraction from 2010 to 2020

Note 1: This equation estimates the GHG reduction percentage required from large covered sources that are not exempted by DOH, termed "affected sources," and includes the effect of estimated emissions growth from stationary sources that are not affected by the rules.

In determining the initial 25% CO_2e emission reduction percentage, DOH used 2007 emissions data to represent the 2010 baseline level. The 2007 emissions were used due to discrepancies found when comparing 2010 emissions reported under the Greenhouse Gas Reporting Program (GHGRP) to those projected by ICF International for 2010. The 2010 projected emissions were obtained from a report on "Proposed GHG Reduction Work Plans for Hawaii" prepared by ICF International in 2009 for Hawaii DBEDT. The discrepancy was that the 9,978,285 metric tons of CO_2e emissions reported in 2010 under the GHGRP

exceeded the 9,945,000 metric tons CO_2e emissions projected by ICF International for 2010. Under the GHGRP, only large sources with CO_2e emissions greater than 25,000 metric tons per year are required to report annual GHG emissions. Emissions projected by ICF International should have been larger than those reported under the GHGRP because the projected emissions were based on all sources (both large and small). Therefore, the DOH decided to use the 2007 estimated emissions to calculate the GHG emissions reduction percentage because these emissions were higher (and deemed to be more accurate) than those projected for 2010.

The initial 25% CO_2e emissions cap would apply to all affected covered sources with maximum potential CO_2e emissions (biogenic and non-biogenic) greater than or equal to 100,000 short tons per year. Emissions inventory data for these affected sources, less exempt municipal waste combustion (MWC) operations, indicated total combined CO_2e emissions for 2010 of approximately 9,829,000 metric tons. Although DOH emission estimates were made for all affected sources, the total combined GHG emissions from affected sources were based almost exclusively on GHGRP data from EPA. The GHG emissions reduction consisted of a 1,930,000 metric ton CO_2e difference between 2007 and 1990, plus a 12% estimated emissions growth in stationary sources that would not be regulated under the proposed draft rules. This would add about 124,000 metric tons of CO_2e emissions, bringing the estimated total reduction to about 2,054,000 metric tons of CO_2e emissions, or about 20.9% of the total GHG emissions estimated from the affected sources. The 25% GHG emissions reduction was established with a 4.1% buffer in recognition of the fact that setting the reduction at 20.9% would mean that every affected facility would need to and actually achieve its reduction percentage to reach the 1990 GHG emission level.

The 25% GHG reduction percentage was recalculated and revised after further review of data from DOH's 2010 GHG emission inventory. It was found that DOH 2010 emission estimates, used for the percent reduction calculations, were larger than those reported under the GHGRP for three (3) affected sources. The differences for two (2) facilities were relatively small, about 3,627 and 324 metric tons of CO_2e emissions. However, the difference in CO_2e emissions for the third (3rd) facility was 152,221 metric tons greater than the value reported under the GHGRP. This third (3rd) facility was a landfill with a gas collection and control system, and the emission value estimated by DOH would be consistent with uncontrolled GHG emissions.

There was also an inconsistency with a fourth (4th) facility when comparing GHGRP values from 2010 to those reported in 2011 and 2012. The 2010, 2011, and 2012 fuel usages for this facility were very similar, but the 2010 GHGRP emission estimate was approximately 59% higher than that expected using EPA emission factors, while 2011 and 2012 GHGRP values were only about 2% and 3% higher than estimated using the same emission factors. Through discussions with a facility representative, it was revealed that while continuous emissions

monitoring system data was applied for 2011 and 2012 GHGRP values, emission factors were used for 2010. It appears that an emission factor used by the facility to predict 2010 GHG emissions was anomalously high. Therefore, the DOH used EPA emission factors for the revised percent reduction calculations. Using EPA emission factors, the 2010 CO_2e emissions for this facility were 744,067 metric tons less than reported under the GHGRP.

When the changes detailed in the two previous paragraphs are made, 2010 CO_2e emissions from all of Hawaii's covered sources reduced from 10,254,915 metric tons to 9,354,675 metric tons. In addition to being large in magnitude, this reduction also brings the estimated covered source emissions well below ICF International's 2010 state-wide CO_2e emission projection of 9,945,000 metric tons. For this reason, DOH determined that it was more appropriate to use 2010 state-wide CO_2e emissions projected by ICF International to calculate the GHG reduction percentage. When the revised covered source CO_2e value is coupled with the ICF International state-wide CO_2e emissions level, the reduction required by affected sources to reach the 1990 stationary source CO_2e emissions is reduced from approximately 2,054,000 to 1,137,000 metric tons.

Due to changes in 2010 facility emissions used for the percent reduction calculations, the total combined 2010 CO_2e emissions for affected sources reduces from approximately 9,829,000 metric tons to 8,929,000 metric tons. As a result, the reduction percentage required by affected sources changes from 20.9% to 12.7%. While the original 25% emissions reduction proposed in the draft rules was appropriate when the actual reduction percentage needed was 20.9%, the DOH believes that a 16% GHG reduction provides a similar margin of error level for reducing GHG emission based on the revised calculations (with an actual reduction percentage between 12.2% and 13.2% needed). Emissions estimates for determining the facility-wide emissions cap are provided in Appendix A.

Two (2) additional scenarios were evaluated to determine effects on the required reduction percentage if municipal solid waste (MSW) landfills and MWC operations were exempted from the requirements of Section 11-60.1-204(c), HAR. In the draft rules, the DOH exempted MWC operations from the emissions reduction requirement. The DOH maintains that exemption. In addition, the DOH will also exempt MSW landfills from GHG emissions reduction requirements. Emissions inventory data indicated that 2010 CO_2e emissions for MWC operations were approximately 192,000 metric tons, and approximately 161,000 CO_2e metric tons for MSW landfills. Based on this data, if both MSW landfills and MWC operations are included on the list of affected sources, the emission reduction percentage needed to achieve the 1990 stationary source emissions level is 12.2%. If both MSW landfills and MWC operations are excluded, the calculated emission reduction percentage is 13.2%. Since the changes associated with both these scenarios are minor, the 16% revised reduction

percentage is believed to be an appropriate level for reducing GHG emissions from affected facilities.

Using the equation for GHG reduction percentage, the original (a_T^{orig}) and revised (a_T^{rev}) reduction percentages are calculated as follows:

$$a_T^{orig} = 20.9\% = {(10{,}860 - 8{,}930 + (192 + 10{,}860 - 10{,}021) \times 12\%)}/{(10{,}021 - 192)}$$

$$a_T^{rev} = 13.2\% = {(9{,}945 - 8{,}930 + (353 + 9{,}945 - 9{,}121) \times 12\%)}/{(9{,}121 - 353)}$$

Note 1: Units of emissions are in 1,000 metric tons.
Note 2: For the revised reduction percentage, both MSW landfills and MWC operations are excluded.

Section 11-60.1-204(c) (partial), HAR, will be amended as follows:

[. . .] The minimum facility-wide GHG emissions cap shall be **sixteen percent (16%)** below the facility's total baseline GHG emission levels less biogenic CO_2 emissions, as follows:

$$\text{Facility-wide cap (tpy CO2e)} = (1-\mathbf{0.16}) \times \left[\text{Facility Total Baseline Emissions} - \text{Facility Baseline Biogenic CO2 Emissions} \right] \text{(tpy CO2e)}$$

Where:
Facility Total Baseline Emissions (tpy CO2e) = Baseline[Biogenic + Non-Biogenic GHG Emissions]

Section 11-60.1-204(d)(2), HAR, will be amended as follows:

The 2020 facility-wide GHG emissions cap. Determine the facility-wide GHG emissions cap in accordance with subsection(c), using calendar year 2010 or the proposed GHG baseline emission rate determined by paragraph (1) above. If the required emissions cap requiring a **sixteen** percent **(16%)** emission reduction from baseline year emissions is deemed unattainable, the owner or operator shall provide, as part of the Reduction Plan:

b. <u>Alternate Cap Proposal and GHG Control Assessment</u>

Under the proposed rules, owners and operators of permitted covered sources with potential GHG emissions (biogenic plus non-biogenic) equal to or above 100,000 short tons per year CO_2e must submit a GHG Emission Reduction Plan, which will be used to evaluate and establish an annual facility-wide GHG emissions cap. The minimum facility-wide GHG emissions cap is 16% below a facility's total baseline GHG emission levels less biogenic CO_2 emissions. To implement GHG reductions, the emissions cap will be incorporated into a facility's air permit as a metric (long) ton or short ton per year CO_2e emissions limit, to be achieved by January 1, 2020 and annually maintained thereafter. If the 16% GHG emissions cap is considered unattainable, the proposed rules allow owners and operators of affected sources to propose an alternate GHG emissions cap upon Director's approval only after careful consideration of all available control options that have the potential for practical application to reduce GHG emissions.

To determine whether or not the required facility-wide GHG emissions cap is attainable, the owner or operator of an affected source must conduct a GHG control assessment. The GHG control assessment is similar, but not identical to, the EPA GHG Best Available Control Technology (BACT) analysis for major Prevention of Significant Deterioration (PSD) sources. However, the GHG control assessment is different from BACT in that it will apply to sources exceeding a 100,000 short ton per year CO_2e emissions threshold rather than significant emissions thresholds and other GHG emissions thresholds involved with BACT applicability determinations. Also, the GHG control assessment will not require complex netting evaluations to determine applicability like those found in the PSD regulations. Additionally, under the GHG control assessment, the Director may consider improvements made at a facility prior to the baseline year of actual GHG emissions.

Similar to a BACT analysis, the GHG control assessment will include the following: 1) identify all available GHG control options; 2) eliminate technically infeasible options; 3) rank remaining technically feasible control options; 4) evaluate most effective control options and document results (consider economic, energy, and environmental impacts arising from each option remaining under consideration); and 5) select control option.

To clarify the meaning of "unattainable" as it applies to the facility-wide GHG emissions cap, the DOH proposes the following change to Section 11-60.1-204(c), HAR:

> Unless substantiated by the owner or operator of an affected source and approved by the director to be unattainable <u>**pursuant to section 11-60.1-204(d)**</u>, each GHG Emission Reduction Plan shall establish a minimum

facility-wide GHG emissions cap in tons per year CO_2e, to be achieved by 2020 and maintained thereafter. The minimum facility-wide GHG emissions cap shall be sixteen (16%) below the facility's total baseline GHG emission levels less biogenic CO_2 emissions

The GHG control assessment, as a method similar to BACT, was chosen in establishing the facility-wide GHG emissions cap due to the long history of BACT requirements and the available guidance for selecting BACT. This ensures that individual GHG reduction determinations are reasoned and faithful to the rules and provides a consistent approach for the DOH to determine the most effective measures for reducing GHG emissions.

The EPA has developed BACT guidelines for selecting control technologies and techniques to reduce GHG emissions. The BACT guidance and previous BACT determinations will help affected sources conduct their GHG control assessments.

c. Facility-Wide GHG Cap Baseline Year

Calendar year 2010 serves as the baseline year for the actual GHG annual emissions rate in calculating the facility-wide GHG emissions cap. If calendar year 2010 is deemed unrepresentative of normal operations, then affected sources may propose an alternate baseline emission rate for the Director's approval as provided in Section 11-60.1-204(d)(1)(A), HAR. These options include emissions based on the most recent representative year during the five-year (5-year) period ending in 2010, average emissions over any consecutive two-year (2-year) period during the five-year (5-year) period ending in 2010, average emissions for the five-year (5-year) period ending in 2010, and other comparable methods. These options allow affected sources to take into account and possibly avoid using as their baseline an anomalous year where emissions might have been particularly low.

Requirements for determining the baseline annual emission rate for newly permitted sources without a 2010 operating history are outlined in Section 11-60.1-204(d)(1)(B), HAR. To project emissions, the owner or operator of a newly permitted source shall make the best estimate of normal operations based on information available (e.g., contract agreements, market forecast, operational records, etc.). Potential emissions shall not be used unless the facility will continuously operate at maximum capacity.
Baseline annual emissions are represented by the facility's actual yearly emissions. The baseline actual emissions are necessary to determine the effectiveness of the GHG control measures. Although existing controls will lower a facility's baseline emissions for establishing an emissions cap that is more stringent than if the controls were not there, the Director may consider GHG

improvements prior to the baseline emissions for GHG control assessments. As mentioned in **Section 3.b** of the response to comments, the GHG control assessment is used to determine the emissions cap used in permitting to reduce GHG emissions. The applicant's proposed emissions cap may be lower than the 16% target cap if the Director takes into consideration improvements prior to a facility's baseline year.

4. GHG Emission Reduction Plan

a. Director's Discretion & Public Participation

Each owner or operator of an affected source will be required to submit a GHG Emission Reduction Plan to the director in accordance with Section 11-60.1-204, HAR. A GHG Emission Reduction Plan is comprised of six parts: 1) Facility-wide baseline annual emission rate; 2) The 2020 facility-wide GHG emissions cap; 3) Available control measures; 4) Technically feasible measures; 5) Control effectiveness and cost evaluation; and 6) Proposed control strategy.

Part of the Director's discretion in promulgating rules that will best achieve the intent of Chapter 342B, HRS, includes the ability to make decisions on and revisions to the GHG Emission Reduction Plans submitted by the affected sources, as deemed necessary. However, this discretion is not unfettered, and is subject to review and public participation as outlined below.

GHG Emission Reduction Plan. Since the DOH recognizes the need for public participation in the review of the Director's decisions on GHG Emission Reductions Plans, it amends the proposed draft rules by adding a new **Section 11-60.1-205 (Public participation) and 206 (Public petitions),** HAR, which is provided in full in **Appendix B**.

Also, the public may have access to and the opportunity for inspection of GHG Emission Reduction Plans. Therefore, the DOH amends Section 11-60.1-14(a), HAR, as follows:

> Except as provided in subsection (b), the following information shall be considered government records and as such shall be available for public inspection pursuant to chapter 92F, HRS, unless access is restricted or closed by law:
>
> (1) All permit applications;
>
> (2) All supporting information for permit applications;
>
> (3) Compliance plans and schedules;

(4) Reports and results associated with performance tests and continuous emission monitors;
(5) Ambient air monitoring data and emissions inventory data;
(6) Certifications;
(7) Any other information submitted to the department pursuant to the noncovered and covered source permit program;
(8) Proposed Greenhouse Gas Emission Reduction Plans
[~~(8)~~] (9) Permits; and
[~~(9)~~] (10) Public comments or testimonies received during any public comment period or public hearing.

The intent of these new provisions is to allow for open review of an applicant's proposed GHG Emission Reduction Plan and associated calculations.

Facility-wide Baseline Annual Emission Rate. In addition, as to the facility-wide baseline annual emission rate, for clarification purposes the DOH amends Section 11-60.1-204(d)(1), HAR, as follows:

> The facility-wide baseline annual emission rate (tpy CO_2e). Calendar year 2010 annual emissions shall be used as the baseline emissions to calculate the required facility-wide GHG emissions cap, unless another baseline year or period is approved by the director. Baseline emissions shall be determined in accordance with section 11-60.1-115, separated between biogenic and non-biogenic emissions, and exclude all emissions of noncompliance with an applicable requirement or permit limit. **The owner or operator shall include the data and calculations used to determine the baseline emissions.** If calendar year 2010 is deemed unrepresentative of normal operations, then the owner or operator may propose an alternate baseline annual emission rate for the director's approval, as follows:
>
> (A) The owner or operator shall clearly document why calendar year 2010 is not representative of normal operations and why the proposed alternate year or period is more suitable based on trends, existing equipment and controls, scheduled

maintenance, operational practices, and any other relevant information. Acceptable methods for determining alternate facility-wide baseline annual emissions include:

[. . .]

(iv) comparable methods as approved by the director. The director will not consider the use of periods greater than five-years from 2010, except for extreme cases **such as** where an affected source may not have been fully operational for an extended period of time.

These changes make clear the fact that the facility-wide baseline annual emissions rate calculations are subject to the Director's review and approval.

The 2020 Facility-wide GHG Emissions Cap. In regards to the 2020 facility-wide GHG emissions cap, any revision to the cap will be considered a significant permit modification subject to the application and review requirements of Section11-60.1-104, HAR. This review will take place in lieu of the review provided in the newly proposed Sections 11-60.1-205 and 206, HAR.

Proposed Control Strategy. The proposed control strategy and partnering will be discussed further in **Section 5**. Relevant to public participation, it should be noted that in the event that two (2) sources decide to partner, each source's GHG Emission Reduction Plan, whether or not it requires a permit modification, is subject to public review.

b. GHG Emission Reduction Plan Deadline Extension

The DOH recognizes the time and effort needed to prepare a GHG Emission Reduction Plan, and therefore amends the proposed draft rules by changing the nine (9) month deadline to twelve (12) months and allowing the owner or operator to request for an extension if necessary. Any request for an extension will be subject to the approval of the Director and will require a written request. Section 11-60.1-204(a), HAR, will be amended as follows:

[. . .]Each owner or operator of an affected source shall submit a GHG emission reduction plan **for the director's approval** within **twelve (12)** months of the effective date of this section. **An owner or operator may submit a written request for an extension 30 days prior to the deadline.**

5. <u>Proposed Control Strategy – Partnering</u>

The DOH appreciates comment on, and acknowledges the benefits of, market incentives such as allowances, trading, and offsets. However, due to the relatively small amount of affected sources, partnering was determined to be the most reasonable approach to follow for reducing GHG emissions. Partnering provides added flexibility for affected facilities to achieve the required GHG emissions reductions, and incentives to reduce GHG emissions below the required reduction levels for the affected sources.

Affected sources may propose to combine their facility-wide GHG emissions caps to leverage emissions reductions among partnering facilities in meeting the combined GHG emission caps. If approved by the Director, each partnering facility will be responsible for complying with its own individual adjusted facility–wide GHG emissions cap. A partnering facility that reduces emissions below the minimum 16% of the facility's total baseline GHG emission levels can still be found in violation if it fails to reduce emissions by the amount offered in credit to its partner, as reflected in its permit. Under partnering, the owner or operator of each affected source would be responsible for the terms of its own permit. When two (2) or more sources partner, each affected source must identify the quantity of its planned emissions above or below its initial facility-wide GHG emissions cap. Each partner would agree to revised emissions levels that balance the levels of its partner's. The revised levels would be incorporated into each source's permit as a new, adjusted facility-wide GHG emissions cap. Each partner would be responsible for meeting its own adjusted cap, and would not be affected by a partner source that fails to meet its own adjusted cap as reflected in its permit.

For clarification purposes, Section 11-60.1-204(d)(6), HAR, will be amended as follows:

<u>(6) The proposed Control Strategy. Present the listing of control measures to be used for implementation in meeting the required or proposed alternate 2020 facility-wide GHG emissions cap. Include discussion of the control effectiveness, control implementation schedule, and the overall expected GHG CO_2e emission reductions (tpy) for the entire facility. Owners or operators shall also consider the following:</u>

(A) **Affected** sources may propose to combine their facility-wide GHG emissions caps to leverage emission reductions among partnering facilities in meeting the combined GHG emissions caps. If approved by the director, **each partnering facility will be responsible for complying with its own adjusted GHG facility-wide emissions cap.**

6. MWC Operations & MSW Landfills

The proposed draft rules exempted MWC operations, but did not exempt MSW landfills, from the requirements of Section 11-60.1-204, HAR. In response to public comments regarding MWC operations and MSW landfills, the DOH determined that MWC operations will continue to be exempt, and that MSW landfills will now be conditionally exempt.

The DOH will continue to exempt MWC operations from the requirements of Section11-60.1-204, HAR, because these operations ultimately lower GHG emissions from landfills by diverting or reducing waste going into landfills. Also, during the evaluation conducted as provided in **Section 3**, the DOH determined that exempting MWC operations had a minor effect on the percentage of GHG reductions needed to achieve the 1990 GHG emissions level.

The DOH is amending the proposed draft rules by conditionally exempting MSW landfills subject to controls under NSPS from the requirements of Section 11-60.1-204, HAR. Requirements for gas collection and control systems are provided in 40 CFR Part 60, Subpart Cc, for MSW landfills that commenced construction, reconstruction, or modification before May 30, 1991, and 40 CFR Part 60, Subpart WWW, for MSW landfills that commenced construction, reconstruction, or modification on or after May 30, 1991. In addition, 40 CFR Part 63, National Emission Standards for Hazardous Air Pollutants (NESHAP), Subpart AAAA, applies to new and existing MSW landfills that reference control requirements from NSPS.

The DOH recognizes that gas collection and control systems make significant reductions to GHG emissions from MSW landfills. Also, the evaluation conducted as provided in **Section 3** revealed that exempting MSW landfills had a minor effect on the percentage of GHG reductions needed to achieve the 1990 GHG emissions level. The contribution of GHG emissions from landfills is minimized from gas

collection and control systems used at these facilities to reduce landfill gas emissions.

Therefore, a new Section 11-60.1-204(i), HAR, will be added as follows [the current proposed paragraph (i) will change to (j)]:

> (i) Municipal solid waste landfills required by 40 CFR Part 60, Subpart Cc or 40 CFR Part 60, Subpart WWW to use gas collection and control systems are conditionally exempt from the GHG emission reduction requirements of Subsection 11-60.1-204(c).

It should be noted that California also does not currently require GHG reductions from its waste sector. To comply with California Assembly Bill 341, which requires recycling 75% of solid waste by 2020, the California Environmental Protection Agency Air Resources Board (CARB) is examining alternatives to its current approach of including waste-to-energy non-biogenic emissions and exempting California MSW landfills from cap-and-trade. CARB's proposed goal for 2035 is to achieve net-zero GHG emissions for the waste sector. CARB's proposed goal for 2050 is to reduce direct emissions by 25% beyond the 2035 goal. While it was recognized that the situations in Hawaii and California are not identical, the fact that California is not planning for waste sector GHG reductions until after 2035 was both compelling and consistent with the Hawaii GHG Emissions Reduction Task Force Report, Table 4 (page 29), which presents an estimated growth in non-biogenic CO_2e waste emissions (including waste combustion) of approximately 20% from 2010 to 2020.

7. BACT Applicability Threshold

The BACT applicability threshold will remain at 40,000 tpy CO_2e, as provided in the original proposed draft rules, because the DOH would like to better manage future growth by evaluating emissions and employing the most effective emission control options, considering cost and environmental factors, for a broad range of new and/or modified facilities. Emissions growth will be most reasonably managed by expanding the domain of sources subject to BACT.

8. GHG Fees

The DOH understands and agrees with the concern that under the proposed draft rules, fees would be charged retroactively. The DOH therefore amends the proposed draft rules to charge fees only after promulgation of the rules. Therefore, the proposed text on payments for calendar year 2013 has been removed.

Section 11-60.1-114(a), will be amended by deleting the portion that appears in double strikethrough below:

(a) Except as specified in [~~section~~] subsection 11-60.1-112(h), subsection (b), and below, an annual fee shall be paid in full within the first [~~sixty~~] one-hundred twenty days of each calendar year and a closure fee shall be paid within thirty days after the permanent discontinuance of the covered source. ~~Annual fees assessed for GHG emissions due in calendar year 2013, shall by paid in full by October 1, 2013, unless an extension is provided by the director pursuant to subsection (b).~~

Correspondingly, Section 11-60.1-114(g), will be amended as follows:

(g) The annual fee assessed for each regulated air pollutant shall be determined by multiplying the appropriate dollar per ton charge pursuant to subsections (i) and (j) by the covered source emissions in tons or CO_2e tons per year pursuant to section 11-60.1-115. The dollar per ton charge assessed for all regulated air pollutants (both toxic and non-toxic) shall be determined pursuant to the following subsections:

Annual Fees Due	Subsection(s)
Prior to 2002	As provided for in subchapter 6, amended October 26, 1998
2002, except GHGs	(i)(1) and (2)
2003 and thereafter, except GHGs	(i)(1) and (2), and (j)
2015 for GHGs	(i)(4) and (5)
2016 and thereafter for GHGs	(i)(4) and (5), and (j)

9. <u>Definition of "Subject to Regulation"</u>

One of the goals for the Tailoring Rule is to reduce the permitting burden for regulating GHGs under the federal Clean Air Act (CAA). To reduce the burden, the Tailoring Rule increases the GHG emissions thresholds that require PSD and Title V permitting of stationary sources. Under the CAA, new or modified major sources must obtain PSD permits and implement BACT if the source emits at least 100 or 250 tpy (depending on type of source) of a regulated pollutant and the project results in a significant emissions increase. Also, Title V permitting requirements apply to sources that emit at least 100 tpy of a regulated pollutant. These thresholds are appropriate for criteria pollutants, such as particulate matter and sulfur dioxide; however, the thresholds are not feasible for GHGs, that are emitted at much higher volumes.

The Tailoring Rule established thresholds for GHG emissions that define when PSD and Title V permits are required. After July 1, 2011, under Step 2 of the Tailoring Rule, PSD permitting requirements apply to new projects that emit GHGs of at least 100,000 tpy of CO_2e even if they do not exceed the permitting thresholds for any other pollutant. Modifications at existing major source facilities that increase CO_2e emissions by at least 75,000 tpy, and any amount on a mass basis are subject to PSD permitting requirements, even if they do not significantly increase emissions of any other pollutant. Also, new and existing facilities that emit at least 100,000 tpy CO_2e and GHGs that exceed or equal 100 tpy on a mass basis are subject to Title V permitting requirements. In Step 3 of the Tailoring Rule, EPA decided not to lower the current GHG applicability thresholds from Step 1 and Step 2 levels.

Title V and PSD GHG permitting thresholds established by the Tailoring Rule are provided in Subchapters 1 and 7, HAR, under the definition of "Subject to Regulation." The definition in Subchapter 1, HAR, was intended to be all encompassing and provide thresholds for both Title V and PSD sources. The 100,000 tpy CO_2e emission threshold specified in the definition under Subchapter 1 proposed amendments, however, only addressed Title V applicability. Therefore, the DOH revised Section 11-60.1-1,HAR, as provided below, to also reference the PSD definition of "Subject to Regulation" from Subchapter 7, HAR.

The outcomes of EPA rule making for regulating biogenic CO_2 emissions is uncertain. In the final Tailoring Rule, no exemptions were provided for applicability determinations (major source or major modification) under PSD and Title V for certain GHG emission sources, including biogenic emissions. In the July 20, 2011, final rule making (Federal Register 76), EPA deferred until July 21, 2014, the consideration of CO_2 emissions from bioenergy and other biogenic sources when determining whether a stationary source meets PSD and Title V applicability thresholds (Deferral Rule). On July 12, 2013, the United States Court of Appeals for the District of Columbia Circuit vacated the Deferral Rule. The definition of "Subject to Regulation" of the proposed HAR amendments excluded biogenic CO_2 emissions from air permit applicability determinations in both Subchapters 1 and 7, HAR. Since outcomes for regulating

biogenic CO_2 emissions are unknown, the DOH decided to delete portions of the "Subject to Regulation" definitions that exclude biogenic CO_2 emissions from regulation. This provides flexibility for the DOH to regulate biogenic CO_2 emissions outside the HAR depending on final EPA rule decisions.

Subchapter 1, Section 11-60.1-1, HAR, is amended as follows (the portion that appears in double strikethrough is deleted, the remaining text is adjusted as appropriate):

"Subject to regulation" means for any pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally-applicable regulation codified in 40 CFR Subchapter C of Chapter I, Air Programs, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict ~~the quantity of emissions of that~~ pollutant released from the regulated activity. Except that~~:~~

~~(1)~~ GHG emissions shall be subject to regulation from a stationary source emitting or having the potential to emit 100,000 tpy or more of CO_2 equivalent emissions and GHGs that equal or exceed 100 tpy on a mass basis for the Title V or thresholds specified in Subchapter 7 for PSD.

~~(2) The mass of GHG CO_2 emissions prior to July 21, 2014 or such earlier time as specified by the director or 40 CFR 52.21, shall not include CO_2 emissions resulting from the combustion or decomposition of non fossilized and biodegradable organic material originating from plants, animals, or micro organisms (including products, by products, residues and waste from agriculture, forestry and related industries as well as the non-~~

~~fossilized and biodegradable organic fractions of industrial and municipal waste, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material). Otherwise known as biogenic CO_2 emissions, this deferral does not apply for application, fee, and reporting purposes as specified in subchapters 4, 5, and 6; and applicability determinations under subchapter 11.~~

Subchapter 7, Section 11-60.1-131, HAR, is amended as follows (the portion that appears in double strikethrough is deleted):

"Subject to Regulation" means for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally-applicable regulation codified in Title 40 CFR Chapter I, Subchapter C, Air Programs, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

~~(1)~~ Greenhouse gases (GHGs), the air pollutant defined in 40 CFR Subsection 86.1818-12(a) as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation except as provided in paragraphs (4) to (5) of this definition.

(2) For purposes of paragraphs (3) through (5) of this definition, the term tpy CO_2 equivalent emissions (CO_2e) shall represent an amount of GHGs emitted, and shall be computed as follows:

(A) Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to subpart A of 40

CFR Part 98—Global Warming Potentials. ~~For purposes of this paragraph, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material).~~

(B) Sum the resultant value from paragraph (2)(A) above for each gas to compute a tpy ~~CO_2e.~~

Appendix A – Calculation Summary Spreadsheet

Hawaii GHG Emission Reduction Percentage Calculation Information	Draft Rules	Corrected Draft Rules	Revised Rules	Comments
	1000 CO2e Metric Ton	1000 CO2e Metric Ton	1000 CO2e Metric Ton	
1990 ICF Non-Biogenic Emissions Goal	8,930	8,930	8,930	ICF 1990 estimate (Ref. 1 & 2)
2010 ICF Non-Biogenic Emissions Estimate	10,860	9,945	9,945	Draft: ICF 2007 estimate (Ref. 2) Corrected & Revised: ICF 2010 estimate (Ref. 1)
2010 DOH Permitted Stationary Facilities	10,255	9,355	9,355	Corrected & Revised: 4 changed emission estimates
2010 DOH Large Permitted Stat. Fac.	10,021	9,121	9,121	Affected + Exempted
2010 DOH Affected Stationary Facilities	9,829	8,929	8,768	Corrected & Revised: 4 changed emission estimates Revised: exempts both MWC & MSW landfills
2010 DOH Exempted Stationary Facilities	192	192	353	Revised: exempts both MWC & MSW landfills
DOH Estimated Growth percentage for uncontrolled Emissions	12%	12%	12%	Draft Rules growth for uncontrolled emissions unchanged
GHG Reduction Percentage Calculation Results	20.9%	12.7%	13.2%	See equation in text

Table A-1: Hawaii GHG Emission Reduction Percentage Calculation Information

2010 GHG Facility Emission Information	Draft Rules	Corrected Draft Rules	Comments
	CO2e Metric Ton	CO2e Metric Ton	
Affected: Unchanged Emissions	6,653,331	6,653,331	Total emissions estimate for 20 affected facilities
Affected: Facility Estimate Change #1	36,271	32,644	Corrected Draft Rules use 2010 GHGRP estimate (Ref. 3)
Affected: Facility Estimate Change #2	953,742	953,418	Corrected Draft Rules use 2010 GHGRP estimate (Ref. 3)
Affected: Facility Estimate Change #3	180,137	27,915	Draft: DOH estimate not consistent with controlled landfill emissions Corrected Draft: uses 2010 GHGRP estimate (Ref. 3)
Affected: Facility Estimate Change #4	2,005,978	1,261,911	Draft: Key emission factor used in GHGRP estimate was anomalously high Corrected Draft: used EPA emission factors (Ref. 4)
Unaffected: Unchanged Emissions Estimates	425,455	425,455	Total emissions estimate for 81 unaffected facilities (includes exempted MWC facility)
Total Affected	9,829,460	8,929,220	Both Draft and Corrected Draft only exempt MWC
Total Permitted (Affected + Unaffected)	10,254,915	9,354,675	Corrected Draft Permitted emissions consistent with ICF 2010 estimate

Table A-2: 2010 GHG Facility Emission Information

Ref.1: ICF Report (10 Nov 2009) from The Greenhouse Gas Emissions Reduction Task Force report to the 25th Legislature, State of Hawaii; THE GREENHOUSE GAS EMISSIONS REDUCTION TASK FORCE, STATE OF HAWAII, "REPORT TO THE TWENTY-FIFTH LEGISLATURE STATE OF HAWAII, WORK PLAN FOR GREENHOUSE GAS EMISSIONS REDUCTIONS", December 30, 2009; http://hawaii.gov/dbedt/main/about/annual/2009-reports/2009-sid-ghgrtf.pdf (Note: direct link to web address fails. Need to search for title and link through search engine)

Ref. 2: ICF International, "Hawaii Greenhouse Gas Inventory: 1990 and 2007", December 10, 2008; http://energy.hawaii.gov/wp-content/uploads/2011/10/ghg-inventory-20081.pdf

Ref. 3: US Environmental Protection Agency, "Greenhouse Gas Reporting Program: 2010 Data Sets"; http://www.epa.gov/ghgreporting/ghgdata/2010data.html

Ref. 4: US Environmental Protection Agency, "Emission Factors for Greenhouse Gas Inventories", 7 November 2011; http://www.epa.gov/climateleadership/documents/emission-factors.pdf

Appendix B – Public Participation and Public Petitions

§11-60.1-205 Public participation. (a) The director shall provide for public notice, including the method by which a public hearing can be requested, and an opportunity for public comment on all draft greenhouse gas emission reduction plans from §11-60.1-204. Any person requesting a public hearing shall do so during the public comment period. Any request from a person for a public hearing shall indicate the interest of the person filing the request and the reasons why a public hearing is warranted.

(b) Procedures for public notice, public comment periods, and public hearings shall be as follows:

(1) The director shall make available for public inspection in at least one location in the county affected by the proposed action, or in which the source is or would be located:
  - ~~(A) Information on the subject matter;~~
  - (B) Information submitted by the proposing party, except for that determined to be confidential pursuant to section 11-60.1-14;
  - (C) The department's analysis and proposed action; and
  - (D) Other information and documents determined to be appropriate by the department;

(2) Notification of a public hearing shall be given at least thirty days in advance of the hearing date;

(3) A public comment period shall be no less than thirty days following the date of the public notice, during which time interested persons may submit to the department written comments on:
  - (A) The subject matter;
  - (B) The greenhouse gas emission reduction plan;
  - (C) The department's analysis;
  - (D) The proposed actions; and

(E) Other considerations as determined to be appropriate by the department;

(4) Notification of a public comment period or a public hearing shall be made:

(A) By publication in a newspaper which is printed and issued at least twice weekly in the county affected by the proposed action, or in which the source is or would be located;

(B) To persons on a mailing list developed by the director, including those who request in writing to be on the list; and

(C) If necessary by other means to assure adequate notice to the affected public;

(5) Notice of public comment and public hearing shall identify:

(A) The affected facility;

(B) The name and address of the proposing party;

(C) The name and address of the agency of the department reviewing the plan;

(D) The activity or activities involved in the plan, including, but not limited to, whether the proposing party proposes:

(i) an alternate baseline year;

(ii) an alternate facility-wide GHG emissions cap;

(iii) a control strategy involving partnering with one or more facilities.

(E) The emissions change involved in the plan;

(F) The name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the draft plan, all relevant supporting materials, and all other materials available to the department that are relevant to the decision, except for

information that is determined to be confidential, including information determined to be confidential pursuant to section 11-60.1-14;

(G) A brief description of the comment procedures;

(H) The time and place of any hearing that may be held, including a statement of procedures to request a hearing if one has not already been scheduled; and

(I) The availability of the information listed in paragraph (1), and the location and times the information will be available for inspection; and

(6) The director shall maintain a record of the commenters and the issues raised during the public participation process and shall provide this information to the Administrator upon request.

§11-60.1-206 Public petitions. (a) The applicant and any person who participated in the public comment or hearing process and objects to the grant or denial of a draft GHG emission reduction plan, may petition the department for a contested case hearing by submitting a written request to the director.

(b) The petition shall be based solely upon objections to the draft GHG emission reduction plan, that were raised with reasonable specificity during the public participation process, unless the petitioner demonstrates that it was impracticable to raise such objections; for example, the grounds for such objections arose after the public participation process.

(c) Any petitioner shall file a petition for a contested case hearing within ninety days of the date

of the department's approval or disapproval of the proposed draft GHG emission reduction plan.

(d) Notwithstanding the provisions of subsection (b), if based solely on objections which were impracticable to raise during the public participation process, a petition for a contested case hearing may be filed up to ninety days after the objections could be reasonably raised.

(e) Except as provided in subsection (f), any draft GHG emission reduction plan that has been issued shall not be invalidated by a petition for a contested case hearing. If a draft GHG emission reduction plan is issued by the director, the owner or operator of the source shall not be in violation of the requirement to have submitted a timely and complete application.

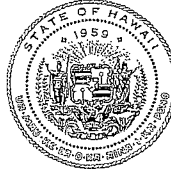
(f) The effective date of draft GHG emission reduction plan shall be as specified for permits in 40 CFR Part 124.15.

(g) Any person may petition for a contested case hearing for the director's failure to take final action on an application for draft GHG emission reduction plan, within the time required for permits by this chapter. Such petition shall be submitted in writing and may be filed any time before the director issues a proposed draft GHG emission reduction.

(h) Any person aggrieved by a final administrative decision and order, including the denial of any contested case hearing, may petition for judicial review pursuant to section 91-14, HRS. A petition for judicial review shall be filed no later than thirty days after service of the certified copy of the final administrative decision and order.

Exhibit 2

NEIL ABERCROMBIE
GOVERNOR



DWIGHT TAKAMINE
DIRECTOR

JADE T. BUTAY
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

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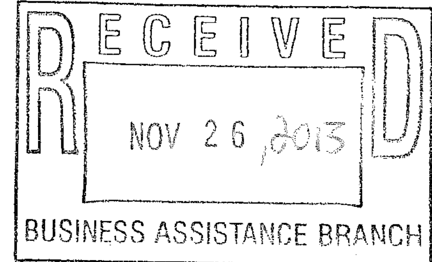
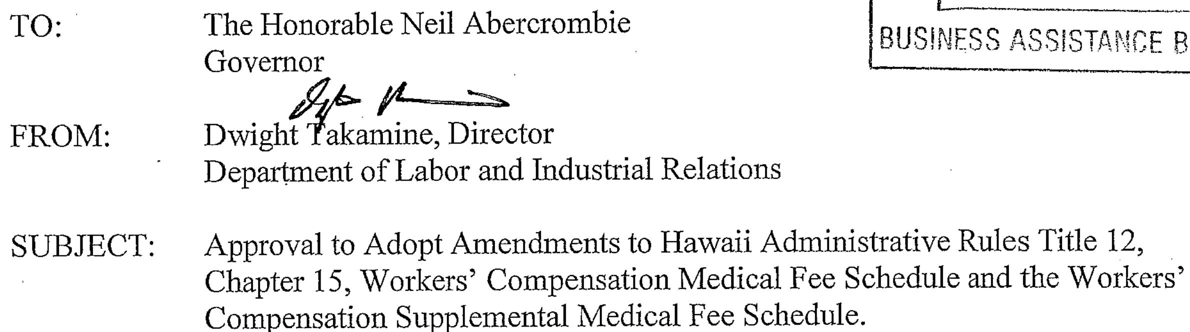


November 21, 2013



TO: The Honorable Neil Abercrombie
Governor

FROM: Dwight Takamine, Director
Department of Labor and Industrial Relations

SUBJECT: Approval to Adopt Amendments to Hawaii Administrative Rules Title 12, Chapter 15, Workers' Compensation Medical Fee Schedule and the Workers' Compensation Supplemental Medical Fee Schedule.

In accordance with Administrative Directive No. 09-1, the Department of Labor and Industrial Relations ("department") respectfully requests your final approval to amend Hawaii Administrative Rules in Title 12, Chapter 15 Workers' Compensation Medical Fee Schedule, and Exhibit A, entitled "Workers' Compensation Supplemental Medical Fee Schedule" effective January 1, 2014.

The facts and circumstances regarding the proposed amendments have not changed from that provided in our August 30, 2013 memo to you. The reasons for the proposed changes as set forth in the August 30, 2013 memo are explained in detail below. The department proposes changes to Title 12, Chapter 15, Workers' Compensation Medical Fee Schedule, and Exhibit A, entitled "Workers' Compensation Supplemental Medical Fee Schedule," to comply with section 386-21(c), Hawaii Revised Statutes, which specifies that the director shall update the schedules required by this section every three years or annually as required, and are in response to requests to raise workers' compensation medical fees and services for certain billing codes. Section 386-21(c) allows the director to adjust fees based upon survey results that indicate that the prevalent fees exceed 110% of Medicare. The DLIR met with Doctors and Interested Parties in January 2013 to discuss increasing fees for frequently used procedure codes. This WC Medical Fee Schedule (WC MFS) Group included Ronald Kienitz, D.O., Linda Rasmussen, M.D., D. Scott McCaffrey, M.D., Mr. David Griffith, Ms. Cathy Wilson, Mr. George Waialeale, Arthur Lum, PT, and Derrick Ishihara, PT. The DLIR also received a request from Ms. Jean Thompson of Hawaiian Rehabilitation Services, Inc. requesting the inclusion of one CPT code to the Supplemental Medical Fee Schedule.

In January 2013, the DLIR's Research and Statistics Office surveyed all the codes in the 2011 Workers' Compensation Supplemental Medical Fee Schedule (which is comprised of CPT and Current Dental Terminology (CDT) codes), 281 CPT codes requested by the WC MFS Group and Ms. Thompson's single CPT code.

In March 2013, the DLIR's Research and Statistics Office completed their survey of all the above codes. Based on analysis of these codes, the proposed 2014 WC Supplemental Medical Fee Schedule Exhibit A will contain a total of 1,067 codes (961 CPT codes plus 106 CDT codes), which is 288 codes less than the 1,355 codes currently in the 2011 WC Supplemental Medical Fee Schedule Exhibit A. Included in the 961 CPT codes are 247 codes proposed by the WC MFS Group, which also included the request from Ms. Thompson. The fees for 714 CPT codes will remain unchanged in the proposed 2014 WC Supplemental Medical Fee Schedule Exhibit A. The overall average percentage change for all CPT codes between the 2011 and the proposed 2014 WC Supplemental Medical Fee Schedule Exhibit A, excluding dental codes, is an increase of 3.9%. The breakdown by sections is as follows:

Evaluation & Management	+9.8%
Medicine	+0.4%
Radiology	0.0%
Surgery	+8.6%
Dental	0.0%

The Hawaii Workers' Compensation Supplemental Medical Fee Schedule is based upon the Medicare Fee Schedule. When there is a reduction or increase in Medicare rates, there is a corresponding drop or increase in workers' compensation rates as well. Reimbursement rates have not kept up with the high cost of medical care, resulting in physicians not willing to accept workers' compensation cases. Section 386-21, Hawaii Revised Statutes, allows the director to determine if the allowance under the Medicare program is reasonable. The proposed fees in Exhibit A, in general, will reimburse medical providers at a higher rate than Medicare; as it will help to ensure at all times, a standard of services and care intended for our injured workers, and that the fees not exceed the prevalent charge for services actually received by health care providers for medical care, services and supplies.

The Hawaii Small Business Regulatory Flexibility Act, Chapter 201M, Hawaii Revised Statutes, and the Governor's Administrative Directive No. 09-01, requires an assessment of the impact on small business. Assessments such as these were conducted in coordination with the National Council of Compensation Insurance (NCCI) and reviewed by the Department of Commerce and Consumer Affairs (DCCA) Insurance Division's consulting actuary, Oliver Wyman. NCCI estimates that the changes proposed to the Hawaii Medical Fee Schedule will result in an overall increase in workers' compensation system costs in Hawaii of +1.6%. With respect to the NCCI's analysis and the actuarial methods used, Oliver Wyman's actuary, Suzanne Black, agrees with NCCI's assessment. DCCA's Insurance Commissioner, Mr. Gordon Ito suggested any proposed changes take effect January 1, 2014 which will bring it in line with NCCI's annual lost cost changes, which go into effect January 1st of every year. Mr. Ito also indicated the proposed rules may have an impact on motor vehicle insurance. Section 431:10C-308.5, Hawaii Revised Statutes, ties the Workers' Compensation Fee Schedule to the fee schedule for personal

injury protection benefits (PIP). Based on NCCI's assumptions on medical costs (51% physician payments), the actuary estimates a maximum impact on PIP will be an increase of 3.2%. Mr. Ito points out any increase in the Workers' Compensation Supplemental Medical Fee Schedule will also affect commercial and personal auto premiums as well.

The DLIR submitted a Small Business Impact Statement with the proposed rules to the Small Business Regulatory Review Board (SBRRB) for their review. DLIR Director, Dwight Takamine, presented the proposed amendments to Chu Lan Shubert-Kwock, Chairperson and members of the SBRRB, at their August 19, 2013 meeting. The SBRRB also heard testimony by some medical providers in support of DLIR's proposal. On August 22, 2013, Chairman Shubert-Kwock notified the DLIR that the Board members unanimously recommended the proposed rules proceed to public hearing.

The public hearing was held in Honolulu on October 30, 2013 at 830 Punchbowl Street, Rooms 310 and 313. Twenty-two people attended the public hearing; nine provided oral testimony and twenty-seven presented written testimony.

The following testimonies were submitted:

	NAME	REPRESENTING
1.	Dr. Ronald Kienitz	HI Medical Association
2.	Derrick Ishihara, PT	
3.	Kris Kadzielawa	IMS
4.	Arthur Lum, PT	President, HAPTA
5.	Dr. Scott McCaffrey	Work*Star
6.	Dennis Chang, Esq.	
7.	Deborah A. Luckett, MPH	VP of Corporate Affairs,Work*Star
8.	Tiffany Prangnell, MPT, ATC, CLT-Lana, Cert. MDT	Owner, Imua PT
9.	Freida S. Takaki	CHART Rehabilitation of HI
10.	Dan Schaal, PT	Owner, Ohana Sports Medicine
11.	Shawna Yee, DPT, OCS, CSCS	East Oahu Physical Therapy
12.	Lisa Plume, MPT, OCS	East Oahu Physical Therapy
13.	Patti Taira-Tokuuke, M.S., PT	Lehua Physical Therapy & Rehab
14.	Herbert Yee, PT	Medical Arts Physical Therapy
15.	Catherine Koike, PT, DPT	Co Owner, StayFIT PT, LLC
16.	Ariel Justin Q. Flores, PT	
17.	Shirleen S. Flores, PT	
18.	Sarah H. Stuhr, PT, DPT, FAAOMPT	
19.	Hawaii Injured Workers Assn.	
20.	Janice Fukuda	HI Insurers Council
21.	Bridget Velasco, PT	
22.	Craig B. Nagata, PT, OCS,MTC	Orthopedic Rehabilitation Specialist
23.	Samantha Stella, DPT, CLT	
24.	Ira D. Zunin, M.D., M.P.H.	Manakai O Malama
25.	George Waialeale	Work Injury Medical Assn. of HI

26. Scott Miscovich, MD — Work Injury Medical Assn. of HI
27. Ronald Gackle, MD — Kaiser on the Job

A more detailed summary of testimonies is attached. A brief summary of the testimonies follows.

The majority of testifiers are strongly in favor of the proposed changes to the Workers' Compensation Medical Fee Schedule (WCMFS) and Exhibit A to increase reimbursement rates to the providers of service. Some testifiers indicate that the increase in fees will only have a minimal impact on workers' compensation premium costs. Some of those testifying feel it was detrimental to the providers when the 1995 Legislature based the workers' compensation reimbursement for medical services on Medicare's rates which resulted in many physicians and providers of service refusing to treat workers' compensation patients. Many testifiers recommend that the Federal Office of Workers' Compensation Programs (OWCP) reimbursement levels be used instead of Medicare due to the complexity of care and administrative requirements to provide care to the injured workers. Other testifiers prefer an across the board increase for all fees to Medicare plus 30% or more. They mention that low reimbursements, coupled with inordinate paperwork requirements, have driven providers to no longer take injured workers as patients. The lack of physicians willing to treat injured workers is especially problematic on the neighbor islands where a shortage of physicians already exists. However, to change the reimbursement rate to other than Medicare plus 10%, this must be accomplished by legislative amendment to section 386-21(c), HRS. The Legislative Auditor is currently studying the Workers' Compensation Medical Fee Schedule pursuant to Act 97 (HB 152 HD1 SD2 CD1) to identify which fee adjustments are necessary to ensure that injured employees have better access to treatment, and to determine a methodology for conducting the statistically valid surveys of prevailing charges that are necessary for adjustment of the fees. They will make their recommendation to the Director no later than June 1, 2014 regarding fee adjustments.

CHART requested an increase in fees to two additional CPT codes 97004, OT Re-evaluation, and DLIR code 97545A, Work Conditioning. The Department points out that CPT code 97004 is not on the 2014 proposed Exhibit A. Since the 2013 Medicare Par plus 10% ($63.84) is greater than the survey average, we cannot justify the increase for CPT code 97004. The current reimbursement rate for DLIR code 97545A, Work Conditioning, is $201.24 for maximum 4 hours. The survey does not justify any further increase in fees for this code.

The Hawaii Insurers Council (HIC) opposes the medical fee schedule increases to palliative care codes to include physical therapy and massage therapy codes. According to HIC, massage therapy is not reimbursed at all under prepaid health care and group healthcare has utilization review guidelines for palliative care (PT) and there are caps in terms of the number of covered visits in order to control costs. HIC also points out that there are many more people licensed in massage, physical therapy, and occupational therapy than physicians, and those providers are allowed to charge up to 4 procedures or modalities (1 hour) per injury per day (4 times the listed fee) resulting in higher fees. If workers' compensation is the highest area of reimbursement between auto insurance and prepaid healthcare, HIC feels there may be more abuse and fraud in

the classification of type of injuries and greater financial incentive to cost shift into workers' compensation which will result in higher premiums to Hawaii's businesses.

Solera Integrated Medical Solutions (IMS) has 3 requests regarding the proposed changes:

a) That it be provided a copy of the Director's "current fee study as per HRS 386-21(c)(2) supporting the proposed changes and a re-evaluation of (at minimum) the proposed (physical therapy) fee increases based on the actual market data". IMS is concerned that the physical therapy codes "are being increased to levels far above the Hawaii group health (market) rates".

b) Clarification on the use of ICD-9 and ICD-10 coding with regard to workers' compensation diagnosis in sections 12-15-13 and 12-15-80, HAR. ICD-9 is the current coding used by Medicare for billing purposes. Medicare is converting to ICD-10 coding which provide better descriptions of diagnosis effective October 1, 2014. IMS recommends that DLIR add language in the Administrative Rules to address use of the ICD-10 codes.

c) Clarification regarding National Drug Code (NDC) numbers for prescription drug reimbursement in HAR 12-15-55(c) to prevent disputes stemming from providers reporting highly priced repackaged NDC numbers.

The Department of Labor and Industrial Relations (DLIR) will not disclose a copy of the survey results because its disclosure will frustrate its statutory duty to establish fees. See Office of Information Practices Opinion Letter No. 02-07. The DLIR opines that the 2014 proposed WC maximum allowable fees are reasonable because they are above Medicare plus 10% and based on survey results.

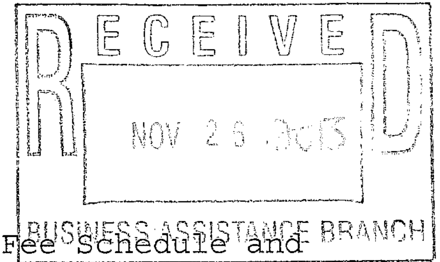
Clarification on the use of ICD-9 and ICD-10 coding with regard to WC diagnosis is a substantive change and was not noticed for this public hearing. Similarly, clarification regarding NDC code numbers for prescription drug reimbursement in HAR 12-15-55(c) to prevent disputes stemming from providers reporting highly priced repackaged NDC numbers is a substantive change and was not noticed for this public hearing. The DLIR will consider these recommendations and may address them at a future public hearing.

In summary, the majority of testimonies submitted favored the proposed amendments including the proposed changes to the Supplemental Medical Fee Schedule known as Exhibit A. Two testifiers had concerns regarding the increase in fees for physical therapy and massage and felt this may lead to abuse. However, the fees in question are higher than the 2013 Medicare plus 10% and appear reasonable based on survey results.

Therefore, I respectfully request your approval, at your earliest convenience, to adopt the amendments as proposed to Title 12, Chapter 15, workers' compensation medical fee schedule including Exhibit A, entitled the "Workers' Compensation Supplemental Medical Fee Schedule" dated January 1, 2014.

Enclosures
Three (3) copies of proposed rules in standard format

c: Department of Budget and Finance
Department of Business, Economic Development and Tourism/Small Business Advisory Board
Director of Commerce and Consumer Affairs, Insurance Commissioner



SUMMARY OF TESTIMONIES
Chapter 12-15
Hawaii Administrative Rules
Relating to the Workers' Compensation Medical Fee Schedule and
Exhibit A, the Supplemental Workers' Compensation Medical Fee
Schedule

November 21, 2013

Section 12-15-90 Workers' compensation medical fee schedule and Exhibit A:

1. Testimony: Ron Kienitz, M.D.; Derrick Ishihara, P.T.; Scott McCaffrey, M.D., and Deborah Luckett, M.P.H. of WorkStar Injury Recovery Center; Frieda Takaki and 35 employee owners of CHART; Herbert Yee, P.T., of Medical Arts Physical Therapy; Ira Zunin, M.D., of Manakai O Malama Integrative Healthcare Group & Rehabilitation Center; and George Waialeale, of Work Injury Medical Association of Hawaii (WIMAH) are strongly in favor of the proposed changes to the Workers' Compensation Medical Fee Schedule (WCMFS) and Exhibit A to increase reimbursement rates to the providers of service. Some of these providers feel it was detrimental to the providers when the 1995 Legislature based the workers' compensation reimbursement on Medicare's rates. This may have resulted in many physicians and providers of service refusing to treat WC patients. Some of the providers opine that the proposed increase should result in a minimal increase in WC premium cost, if any.

   DLIR Response: The Department agrees with the proposed changes to increase the reimbursement in the Workers' Compensation Medical Fee Schedule.

2. Testimony: Derrick Ishihara, P.T.; Arthur Lum, P.T., representing Hawaii Chapter of the American Physical Therapy Association (HAPTA); Tiffany Prangnell, M.P.T., and Bridget Velasco, P.T., of Imua Physical Therapy; CHART; Dan Schaal, P.T., of Ohana Sports Medicine; Shawna Yee, D.P.T., and Lisa Plume, M.P.T., of East Oahu Physical Therapy (EOPT); Patti Taira-Tokuuke, M.S., P.T., of Lehua Physical Therapy and Rehab; Medical Arts Physical Therapy; Catherine Koike, P.T.; Ariel Justin Flores, P.T.; Shirleen Flores, P.T.; Sarah Stuhr, P.T.; Craig Nagata, P.T., of Orthopedic Rehabilitation Specialists; and Samantha Stella, D.P.T., strongly support the proposed amendments and also recommend that the Federal Office of Workers' Compensation Programs

(OWCP) reimbursement levels be used instead of Medicare due to the complexity of care and administrative requirements to provide care to the injured workers. This may entice more physicians to re-enter the WC arena if they are better compensated for their work resulting in more timely care for injured workers and workers could get back to work sooner.

DLIR Response: The current workers' compensation statute, section 386-21(c), HRS, mandates in part that the charges shall not exceed one hundred ten per cent of fees prescribed in the Medicare Resource Based Relative Value Scale applicable to Hawaii. Although the testimonies recommend using the Federal OWCP rates, this must be accomplished with a legislative amendment of section 386-21(c), HRS.

The Federal Office of Workers' Compensation Programs (OWCP) reimbursement rate is slightly higher than the proposed MFS rate increases. However, the OWCP rules differ from our State WC rules and there are caps on the amounts of treatment allowed under OWCP. The Department believes the proposed increases to the WCMFS are reasonable because they are above the current Medicare plus 10% and based on survey results. If the Department adopts some of the OWCP rates in the MFS, some of the administrative rules should be amended to follow the OWCP caps in treatment.

3. Testimony: CHART recommends an increase in fees to two additional codes 97004, OT Re-evaluation, and 97545A, Work Conditioning. They request an increase in the OT re-evaluation to match the 8% increase for the PT re-evaluation to $68.95. The DLIR work hardening code, 97545A, has not changed since 2005 and CHART requests a 20% increase to $60.37.

   DLIR Response: The CPT code 97004, OT Re-evaluation, is not listed on the 2014 proposed Exhibit A. The 2013 Medicare Par plus 10% fee for this code is $63.84 which is greater than the survey average. Therefore, we cannot justify the 8% increase of $68.95 for CPT code 97004.

   The current reimbursement rate for DLIR code 97545A, Work Conditioning, is $201.24 for maximum 4 hours. The survey does not justify any further increase in fees for this code.

4. Testimony: Dennis Chang, Esq., Hawaii Injured Workers Association (HIWA), and Scott Miscovich, M.D., of Work Injury Medical Association of Hawaii (WIMAH) support the proposed increases to the WCMFS but would have preferred an across-the-board increase for all fees. They mention that low reimbursements, coupled with inordinate paperwork requirements, have driven providers to no longer take injured workers as patients. The lack of physicians willing to treat injured workers is especially problematic on the neighbor islands where a shortage of physicians already exists. Dennis Chang, Esq., cites several WC clients who were unable to access quality medical care because physicians are deterred from engaging in the WC process because of additional administrative burdens imposed on them. Some clients had to receive treatment under their private medical plans because they could not find a doctor willing to treat a WC patient. HIWA hopes that the Department can address fee changes for all billing codes. WIMAH recommends an increase of the fee schedule to 130% of Medicare. Ronald Gackle, M.D., of Kaiser on the Job, states that Medicare plus 30% "is barely enough to sustain existence", and prefers more.

   DLIR Response: The current workers' compensation statute, section 386-21(c), HRS, mandates in part that the charges shall not exceed one hundred ten per cent of fees prescribed in the Medicare Resource Based Relative Value Scale applicable to Hawaii. Legislative bills to raise the fees to Medicare plus 30% have been introduced at the Legislature but have not passed. The 2013 Legislature passed Act 97 (HB 152 HD1 SD2 CD1) to require the Legislative Auditor to assist the director of DLIR to identify which fee adjustments are necessary to ensure that injured employees have better access to treatment, and determine a methodology for conducting the statistically valid surveys of prevailing charges that are necessary for adjustment of the fees. The Legislative Auditor will make the recommendations to the director no later than June 1, 2014 regarding fee adjustments.

5. Testimony: Janice Fukuda, Assistant Vice President of Claims at First Insurance Company of Hawaii, representing Hawaii Insurers Council, opposes the medical fee schedule increases to palliative care codes listed on page A-11 of the 2014 proposed Exhibit A to include physical therapy and massage therapy codes. She mentioned that there are a total of 8,890 people combined who have licenses in massage

therapy, occupational therapy, and physical therapy. By contrast, there are less than one dozen orthopedic surgeons treating workers' compensation patients within 25 miles of zip code 96813. Massage therapy is not reimbursed at all under prepaid health care and group healthcare has utilization review for palliative care and caps in terms of number of covered visits to control costs. If workers' compensation is the highest area of reimbursement between auto insurance and prepaid healthcare, there may be more abuse and fraud in the classification of type of injuries and greater financial incentive to cost shift into workers' compensation which will result in higher premiums to Hawaii's businesses.

DLIR Response: The DLIR opines that the 2014 proposed WC maximum allowable fees are reasonable because they are above Medicare plus 10% and based on survey results.

6. Testimony: Kris Kadzielawa of Solera Integrated Medical Solutions (IMS) has 3 requests regarding the proposed changes:
   a) That it be provided a copy of the Director's "current fee study as per HRS 386-21(c)(2) supporting the proposed changes and a re-evaluation of (at minimum) the proposed (physical therapy) fee increases based on the actual market data". IMS is concerned that the physical therapy codes "are being increased to levels far above the Hawaii group health (market) rates". IMS has concerns about such CPT codes as 97110, 97124, 97140, 97530, and 97001. They state that group health reimburses $90 to $130 per hour of physical therapy (PT), including co-pay, while the proposed MFS increase yields $170 to $180 per hour for WC PT.
   b) Clarification on the use of ICD-9 and ICD-10 coding with regard to WC diagnosis in sections 12-15-13 and 12-15-80, HAR. ICD-9 is the current coding used by Medicare for billing purposes. Medicare is converting to ICD-10 coding which provide better descriptions of diagnosis effective October 1, 2014. IMS recommends that DLIR add language in the Administrative Rules to address use of the ICD-10 codes.
   c) Clarification regarding National Drug Code (NDC) numbers for prescription drug reimbursement in HAR 12-15-55(c) to prevent disputes stemming from providers reporting highly priced repackaged NDC numbers.

DLIR Response:

a) The DLIR will not disclose the Director's current fee study to Mr. Kadzielawa. The State of Hawaii Office of Information Practices Opinion Letter No. 02-07, dated August 27, 2002, opined that Schedules of maximum allowable fees that are required by statute to be submitted to the Department of Labor & Industrial Relations (DLIR) by health care plan Contractors, may be withheld from public disclosure as its disclosure would frustrate DLIR's statutory duty.

The DLIR opines that the 2014 proposed WC maximum allowable fees (CPT codes 97001, 97110, 97124, 97140, 97530) are reasonable because they are above Medicare plus 10% and based on survey results.

b) Clarification on the use of ICD-9 and ICD-10 coding with regard to WC diagnosis is a substantive change and was not noticed for this public hearing. The DLIR will consider this recommendation and may address it at a future public hearing.

c) Clarification regarding NDC code numbers for prescription drug reimbursement in HAR 12-15-55(c) to prevent disputes stemming from providers reporting highly priced repackaged NDC numbers is a substantive change and was not noticed for this public hearing. The DLIR will consider this recommendation and may address it at a future public hearing.

RULE MAKING CHECKLIST
FOR
SMALL BUSINESS STATEMENT AFTER PUBLIC HEARING

November 21, 2013

DEPARTMENT OR AGENCY: DLIR/DCD
Chapters and Title: Chapter 12-15 Workers' Compensation Medical Fee Schedule

Name and Phone Number Of Contact Person: Walter B. Kawamura, 586-9151

1. Summarize how the comments or testimonies from small businesses were solicited.

   A notice of public hearing was published in the Honolulu Star-Advertiser, Hawaii Tribune-Herald, West Hawaii Today, The Maui News, and The Garden Island on September 30, 2013 for the public hearing held on October 30, 2013.

2. Summarize the written and oral testimonies received from the public and small business regarding any proposed rule that affects small business.

   There were a total of twenty seven written testimonies received, eight of which were also given orally. Another person presented oral testimony but did not submit a written testimony. Twenty five testimonies strongly supported the proposed amendments to increase the fees in the Workers' Compensation Medical Fee Schedule. Several of these preferred that the reimbursement be based on the Federal Office of Workers' Compensation Programs (OWCP) rather than Medicare. Some preferred across the board increases to the fees. CHART requested fee increases to two additional codes. Two of the testimonies had concerns regarding the increases to palliative care codes such as physical therapy and massage therapy codes as being high. One testifier also wanted clarification on the use of ICD-9 and ICD-10 codes regarding WC diagnosis and clarification regarding NDC codes for prescription drug reimbursement.

3. Summarize the department's or agency's response to the comments or testimonies received in item 2.

The department agrees that the increase in the proposed fees, including palliative care fees, is reasonable based on survey results. Also, based on survey results, it was not reasonable to increase the fees for the two additional codes requested. Changing the reimbursement to OWCP or a higher across the board percentage above Medicare involve a statute change by the Legislature and therefore, was not addressed in this administrative rule process. The comments concerning ICD-9 and ICD-10 codes and NDC numbers for prescription drug reimbursement involve subsections of the rules that were not noticed for this public hearing and may be addressed at a future public hearing.

4. How many persons attended the public hearing? 22

5. How many persons orally testified at the public hearing? 9

6. How many persons submitted written comments or testimonies in response to the proposed rules? 27

7. If there was a request to change the proposed rule at the public hearing in a way that affects small business and no change was made, explain why the request was not accepted.

The department recommends approval of the proposed amendments as it will benefit small business and the proposed fee changes are reasonable based on survey results. The proposed changes to Exhibit A may negatively impact small business if the increase in fees results in higher premium costs for workers' compensation and commercial no-fault premiums per actuary. On the other hand, there are medical providers that are small business owners themselves and would benefit from the proposed increase in fees.

The Small Business Regulatory Review Board registered no objections and gave their unanimous approval of these proposed rules to proceed to public hearing.

STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

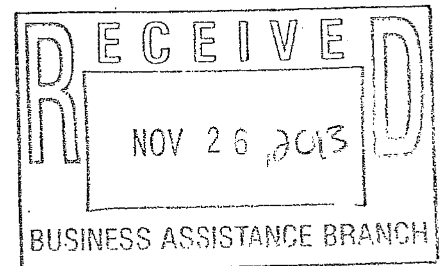
Amendments to Chapter 12-15
Hawaii Administrative Rules

November 21, 2013

SUMMARY

1. §12-15-90 is amended.

2. Exhibit A is amended.



§12-15-90 Workers' compensation medical fee schedule. (a) Charges for medical services shall not exceed one hundred ten per cent of participating fees prescribed in the Medicare Resource Based Relative Value Scale System fee schedule (Medicare Fee Schedule) applicable to Hawaii or listed in exhibit A, located at the end of this chapter and made a part of this chapter, entitled "Workers' Compensation Supplemental Medical Fee Schedule", dated January 1, 2014. The Medicare Fee Schedule in effect on January 1, 1995 shall be applicable through June 30, 1996. Beginning July 1, 1996 and each calendar year thereafter, the Medicare Fee Schedule in effect as of January 1 of that year shall be the effective fee schedule for that calendar year.

(b) If maximum allowable fees for medical services are listed in both the Medicare Fee Schedule and the Workers' Compensation Supplemental Medical Fee Schedule, dated January 1, 2014, located at the end of this chapter as exhibit A, charges shall not exceed the maximum allowable fees allowed under the Workers' Compensation Supplemental Medical Fee Schedule, dated January 1, 2014, located at the end of this chapter as exhibit A.

(c) If the charges are not listed in the Medicare Fee Schedule or in the Workers' Compensation Supplemental Medical Fee Schedule, dated January 1, 2014, located at the end of this chapter as exhibit A, the provider of service shall charge a fee not to exceed the lowest fee received by the provider of service for the same service rendered to private patients. Upon request by the director or the employer, a provider of service shall submit a statement to the requesting party, itemizing the lowest fee received for the same health care, services, and supplies furnished to any private patient during the one-year period preceding the date of a particular charge. Requests shall be submitted in writing within twenty calendar days of receipt of a

questionable charge. The provider of service shall reply in writing within thirty-one calendar days of receipt of the request. Failure to comply with the request of the employer or the director shall be reason for the employer or the director to deny payment.

(d) Fees listed in the Medicare Fee Schedule shall be subject to the current Medicare Fee Schedule bundling and global rules if not specifically addressed in these rules. The Health Care Financing Administration Common Procedure Coding System (HCPCS) alphabet codes adopted by Medicare will not be allowed, except for injections and durable medical equipment, unless specifically adopted by the director. The director may defer to a fee listed in the Medicare HCPCS Fee Schedule when a fee is not listed in the Workers' Compensation Supplemental Medical Fee Schedule, Exhibit A.

(e) Providers of service will be allowed to add the applicable Hawaii general excise tax to their billing. [Eff 1/1/96; am 1/1/97; am 11/22/97; am 12/17/01; am 12/13/04; am 11/6/06; am 12/14/07; am 2/28/11; am] (Auth: HRS §§386-21, 386-26, 386-72) (Imp: HRS §§386-21, 386-26)

EXHIBIT A

Chapters 12-15
Hawaii Administrative Rules

WORKERS' COMPENSATION SUPPLEMENTAL MEDICAL FEE SCHEDULE

January 1, 2014

The codes in the Workers' Compensation Supplemental Medical Fee Schedule are obtained from the American Medical Association, the American Dental Association or the State Department of Labor and Industrial Relations.

The five character codes included in the Workers' Compensation Supplemental Medical Fee Schedule are obtained from Current Procedural Terminology (CPT®), copyright 2013 by the American Medical Association (AMA). CPT is developed by the AMA as a listing of descriptive terms and five character identifying codes and modifiers for reporting medical services and procedures performed by physicians.

The responsibility for the content of the Workers' Compensation Supplemental Medical Fee Schedule is with DLIR and no endorsement by the AMA is intended or should be implied. The AMA disclaims responsibility for any consequences or liability attributable or related to any use, nonuse or interpretation of information contained in the Workers' Compensation Supplemental Medical Fee Schedule. Fee schedules, relative value units, conversion factors and/or related components are not assigned by the AMA, are not part of CPT, and the AMA is not recommending their use. The AMA does not directly or indirectly practice medicine or dispense medical services. The AMA assumes no liability for data contained or not contained herein. Any use of CPT outside of the Workers' Compensation Supplemental Medical Fee Schedule should refer to the most current CPT codes and descriptive terms. Applicable FARS/DFARS apply.

CPT is a registered trademark of the American Medical Association

The five character codes starting with the letter "D" included in the Workers' Compensation Supplemental Medical Fee Schedule are obtained from Current Dental Terminology 2013, copyright 2012 by the American Dental Association (ADA). CDT is developed by the ADA to achieve uniformity, consistency and accurate reporting of dental treatment.

The calculated "value of one unit" is $33.54. The fee for each procedure should be computed by multiplying its "unit value" by $33.54.

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SURGERY

Integumentary System

Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days
10060	4.7		12017	9.7		13152	23.6	
10061	8.2		12018	12.1		13153	7.6	
10120	6.2		12031	10.9		14000	27.9	
10121	11.6		12032	14.5		14001	35.9	
11000	2.3		12034	14.1		14020	31.0	
11001	0.9		12035	16.4		14021	40.0	
11010	21.0		12041	10.5		14040	33.4	
11043	9.3		12042	13.6		14041	44.1	
11044	12.7		12044	15.9		14060	34.7	
11720	1.4		12045	17.5		14061	48.2	
11730	4.3		12051	11.5		15120	30.8	
11740	2.2		12052	12.9		15121	9.2	
11750	10.0		12053	15.7		15220	34.6	
11760	9.4		12054	16.9		15221	5.8	
12001	4.9		13100	13.3		15260	42.6	
12002	5.4		13101	18.0		15740	44.6	
12004	6.4		13102	4.5		15750	42.8	
12005	8.0		13120	13.9		16000	2.8	
12006	9.5		13121	18.8		16020	3.4	
12007	10.8		13122	5.0		16025	6.0	
12011	5.4		13131	15.3		16030	7.3	
12013	6.0		13132	24.4		16035	7.9	
12014	7.0		13133	6.9		16036	3.4	
12015	8.5		13150	16.6		17003	0.3	
12016	10.1		13151	18.3				

Musculoskeletal System

Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days
20520	8.2		20550	2.4		20553	2.5	
20525	22.1		20551	2.4				
20526	2.7		20552	2.2				

Code	Description	Unit Value
20560*	Acupuncture, initial 15 minutes (inclusive of evaluation and supplies)	1.0
20561*	each additional 15 minutes	0.4

Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days
20600	2.3		20937	6.8		21338	32.6	
20605	2.7		20974	2.8		21339	39.2	
20610	3.1		21310	5.3		21385	30.1	
20612	2.2		21315	12.1		22326	51.9	
20660	8.7		21320	12.0		22327	51.3	
20822	79.4		21325	22.1		22548	66.7	
20900	17.8		21330	26.3		22551	74.3	
20902	17.5		21335	31.6		22552	16.5	
20920	14.1		21336	29.9		22554	53.6	
20924	17.8		21337	18.3		22556	69.5	

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Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days
22558	63.9		25110	13.6		26727	20.0	
22585	13.5		25111	12.0		26735	25.9	
22590	55.8		25112	13.9		26750	7.7	
22595	53.3		25115	31.0		26755	14.2	
22600	45.6		25118	14.2		26765	20.4	
22610	44.9		25230	16.1		26770	11.0	
22612	60.1		25248	16.5		27087	22.0	
22614	15.6		25250	18.6		27096	9.2	
22630	57.9		25260	26.4		27125	41.3	
22840	27.8		25270	21.4		27130	61.1	
22842	32.1		25272	22.9		27132	71.1	
22845	27.8		25274	27.3		27134	72.9	
22851	16.5		25505	22.9		27235	33.7	
23035	24.8		25515	24.5		27244	45.7	
23040	26.2		25525	31.3		27245	49.6	
23076	19.7		25545	23.6		27246	13.6	
23100	17.9		25574	24.1		27248	27.8	
23101	16.4		25605	24.7		27267	17.0	
23105	24.6		25607	26.2		27301	27.7	
23130	22.9		25608	29.9		27345	17.2	
23184	27.1		25609	38.0		27380	21.5	
23332	31.8		25628	25.4		27385	24.2	
23350	5.4		25645	21.5		27405	24.7	
23410	35.9		25652	22.8		27422	28.8	
23412	31.2		25695	22.8		27425	16.8	
23415	26.5		25800	27.6		27430	26.9	
23420	42.5		25825	28.9		27447	65.3	
23430	31.5		26025	15.0		27487	66.2	
23450	35.0		26034	18.9		27501	18.1	
23455	42.6		26037	21.5		27506	56.4	
23460	42.2		26055	23.5		27517	24.1	
23462	39.7		26075	11.6		27524	31.9	
23465	41.0		26115	20.4		27530	13.3	
23466	42.7		26130	16.6		27535	34.5	
23470	44.8		26200	17.0		27570	5.4	
23472	54.2		26230	17.9		27603	22.1	
23480	29.2		26320	12.5		27606	10.8	
23485	35.1		26340	12.9		27620	17.0	
23650	12.4		26350	30.6		27650	29.0	
23655	17.5		26356	50.8		27652	27.4	
24105	12.5		26370	32.6		27654	26.5	
24300	16.2		26372	31.5		27680	15.8	
24341	33.2		26410	24.2		27698	24.8	
24342	28.6		26418	24.8		27704	20.6	
24343	26.0		26426	22.5		27705	28.4	
24345	28.3		26485	28.9		27759	38.8	
24357	18.1		26540	28.1		27766	24.0	
24358	21.1		26548	26.9		27767	10.6	
24359	26.3		26600	12.2		27792	27.8	
24575	27.6		26607	16.1		27814	33.3	
24600	14.8		26608	17.2		27822	37.0	
24605	21.1		26650	17.0		27823	37.3	
24666	26.8		26670	11.9		27827	41.3	
24800	29.3		26720	8.1		27828	47.9	
25000	13.5		26725	13.9		27880	32.6	

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Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days
28405	13.7		29805	16.9		29866	38.9	
28420	44.2		29806	45.0		29867	45.5	
28445	38.0		29807	43.9		29871	18.6	
28455	10.0		29819	22.8		29873	19.1	
28465	21.6		29820	21.1		29874	20.8	
28475	9.4		29821	23.2		29875	19.2	
28476	12.7		29822	22.4		29876	24.8	
28485	18.6		29823	26.7		29877	26.4	
28666	7.1		29824	24.9		29879	28.1	
28810	16.9		29825	21.7		29880	27.3	
29065	4.2		29826	7.7		29881	25.8	
29075	3.8		29827	42.6		29882	26.5	
29105	3.8		29828	38.9		29883	30.3	
29125	3.0		29830	16.3		29884	23.4	
29130	1.8		29834	17.8		29885	26.6	
29345	5.9		29838	21.4		29888	41.8	
29405	3.6		29844	18.0		29889	42.8	
29425	3.7		29846	19.4		29894	18.5	
29440	1.7		29848	18.1		29898	22.0	
29515	3.1		29855	29.1		29900	18.8	
29800	18.3		29863	30.8				

Respiratory System

Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days
30140	20.4		30903	8.6		30930	5.4	
30520	29.5		30905	11.3		31231	8.8	
30901	4.1		30906	12.2				

Cardiovascular System

Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days
35207	27.6		36600	1.2		37618	14.9	
36410	0.7		37202	14.1				

Digestive System

Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days
40654	26.1		49505	18.2		49585	15.6	
45378	14.7		49520	22.2		49650	15.4	

Nervous System

Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days
61154	52.7		63042	44.9		64484	5.6	
61312	85.4		63047	42.3		64510	4.8	
61313	82.0		63048	8.5		64550	0.7	
62000	42.2		63075	57.6		64614	6.7	
62005	56.0		63076	10.2		64704	13.0	
62010	63.1		63081	67.4		64708	17.9	
62287	20.2		63090	71.1		64718	21.0	
62319	8.0		63650	15.9		64719	14.9	
63012	42.6		64400	5.3		64721	18.1	
63020	49.0		64405	3.7		64722	12.8	
63030	40.8		64450	4.4		64776	14.3	
63035	8.1		64483	10.3		64831	24.1	

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Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days

Eye and Ocular Adnexa

Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days
65205	2.4		65426	29.0		67412	35.8	
65210	2.9		65435	3.2		67700	11.5	
65222	3.0		66850	32.7		67875	7.0	
65235	30.1		66982	43.9		67911	24.7	
65260	43.2		66984	31.5		67966	32.6	
65265	49.4		67101	31.3		67973	39.2	
65280	27.9		67107	50.5		67974	39.1	
65285	49.1		67108	66.0		68320	32.5	
65286	31.3		67110	34.7				

Auditory System

Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days
69005	9.5		69210	2.2		69436	7.1	
69200	5.7		69433	8.8		69610	17.6	

Operating Microscope

Code	Unit Value	Follow-up Days
69990	8.2	

RADIOLOGY

Fees include both the technical and professional components. In the absence of any prior agreement, the professional component shall be thirty-five percent of the scheduled fee.

Diagnostic Radiology (Diagnostic Imaging)

Code	Unit Value	Code	Unit Value	Code	Unit Value
70010	9.1	70360	1.2	71100	1.5
70015	5.9	70370	3.2	71101	1.8
70030	1.2	70371	5.0	71110	1.9
70100	1.4	70373	3.9	71111	2.4
70110	1.7	70380	1.7	71120	1.6
70120	1.5	70390	4.4	71130	1.7
70130	2.4	70450	10.3	71250	12.7
70134	2.1	70460	13.0	71260	15.6
70140	1.4	70470	15.8	71270	19.0
70150	2.0	70481	15.6	71555	23.7
70160	1.4	70482	18.1	72010	3.0
70170	2.4	70487	14.6	72020	1.1
70190	1.6	70488	17.6	72040	1.6
70200	2.0	70490	11.9	72050	2.3
70210	1.4	70491	14.5	72052	2.9
70220	1.9	70492	17.5	72069	1.5
70240	1.3	71010	1.2	72070	1.6
70250	1.6	71015	1.4	72072	1.8
70260	2.3	71020	1.5	72074	2.1
70300	0.7	71021	1.8	72080	1.7
70328	1.3	71022	2.1	72090	2.0
70330	2.1	71023	2.7	72100	1.7
70332	4.4	71030	2.1	72110	2.4
70350	1.0	71034	4.0	72114	3.1
70355	1.2	71035	1.5	72120	2.2

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Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days
72125	12.2		73600	1.2		75630	20.9	
72126	15.6		73610	1.4		75658	19.4	
72127	18.6		73615	4.8		75705	21.4	
72128	12.2		73620	1.2		75710	19.2	
72129	15.6		73630	1.4		75716	20.2	
72130	18.6		73650	1.2		75726	19.1	
72131	12.2		73660	1.2		75731	19.3	
72132	15.6		73700	11.4		75733	20.5	
72133	18.6		73701	14.3		75736	19.2	
72147	25.5		73702	17.5		75741	19.0	
72170	1.3		73725	23.7		75743	20.0	
72190	1.7		74000	1.3		75746	18.9	
72192	12.1		74010	1.6		75756	19.4	
72193	15.1		74020	1.8		75774	16.7	
72194	18.2		74022	2.1		75801	11.5	
72200	1.3		74150	12.1		75803	12.5	
72202	1.6		74160	15.9		75805	13.0	
72220	1.4		74185	23.7		75810	25.3	
72240	8.9		74190	3.4		75822	6.0	
72255	8.2		74210	3.2		75825	18.5	
72265	7.9		74220	3.6		75827	18.5	
72270	12.2		74230	3.8		75831	18.6	
72275	5.1		74240	4.6		75833	19.7	
72285	12.6		74241	4.8		75840	18.6	
72295	11.5		74245	7.2		75842	19.7	
73000	1.3		74246	5.2		75860	18.8	
73010	1.3		74249	7.7		75870	18.7	
73020	1.1		74250	4.1		75872	19.3	
73030	1.4		74305	2.4		75885	19.3	
73040	5.0		74320	6.1		75887	19.4	
73050	1.6		74327	5.4		75889	18.6	
73060	1.4		74328	7.4		75891	18.6	
73070	1.2		74330	7.7		75893	17.3	
73080	1.5		74340	6.0		75894	46.3	
73085	4.7		74355	6.5		75896	40.6	
73090	1.3		74360	7.1		75898	5.6	
73100	1.3		74400	4.6		75945	9.2	
73110	1.5		74410	5.1		75960	20.4	
73115	4.4		74415	5.6		75962	21.3	
73120	1.2		74420	5.7		75964	11.8	
73130	1.4		74425	3.2		75966	23.2	
73200	11.4		74430	3.2		75968	11.8	
73201	14.3		74440	3.5		75970	22.6	
73202	17.5		74445	4.6		75978	21.2	
73500	1.2		74450	3.4		75980	13.0	
73510	1.6		74455	4.0		75984	5.2	
73520	1.8		74470	3.5		75989	7.4	
73525	4.7		74475	7.1		76001	6.3	
73530	1.6		74480	7.1		76080	3.0	
73550	1.4		74485	6.2		76098	1.0	
73560	1.3		74710	2.3		76101	6.9	
73562	1.5		74740	3.4		76120	3.2	
73564	1.7		75600	16.8		76125	2.1	
73580	5.8		75605	18.9				
73590	1.3		75625	18.8				

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Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days

Diagnostic Ultrasound

Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days
76511	4.8		76705	4.4		76873	7.6	
76512	4.6		76770	5.6		76930	4.4	
76513	4.5		76775	4.5		76932	4.4	
76516	3.5		76800	5.3		76950	3.4	
76519	3.6		76830	5.0		76965	10.0	
76529	3.7		76831	5.0		76975	4.6	
76604	3.8		76856	5.0		76977	1.2	
76700	5.9		76870	5.0				

Radiation Oncology

Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days
77261	3.1		77326	6.5		77431	4.1	
77262	4.6		77327	9.4		77432	17.6	
77263	6.8		77328	13.2		77470	18.0	
77280	8.3		77331	2.8		77750	14.2	
77285	13.8		77332	3.6		77761	14.6	
77290	20.1		77333	4.1		77762	20.3	
77295	45.6		77334	7.9		77763	28.7	
77300	3.5		77336	4.2		77776	16.6	
77305	4.1		77370	6.0		77777	24.7	
77310	5.5		77401	2.3		77778	35.0	
77315	7.4		77417	0.9		77790	3.6	
77321	7.4		77427	7.6				

Nuclear Medicine

Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days
78016	11.9		78264	11.2		78607	15.9	
78018	13.3		78270	3.5		78610	7.0	
78020	4.0		78271	3.6		78700	7.3	
78103	8.9		78272	4.5		78701	8.7	
78104	10.4		78300	7.0		78707	10.7	
78111	4.9		78305	9.5		78708	9.8	
78120	3.9		78306	10.6		78709	14.1	
78121	5.4		78320	12.4		78710	11.6	
78122	7.7		78428	7.9		78725	4.4	
78130	6.8		78457	7.8		78730	3.6	
78140	7.7		78458	9.4		78761	8.5	
78191	11.9		78468	9.6		78800	8.1	
78202	8.1		78469	11.8		78801	10.4	
78205	11.7		78472	12.2		78802	13.5	
78206	14.2		78473	17.4		78803	15.5	
78215	7.6		78481	11.2		78805	8.1	
78216	7.0		78483	16.3		78806	14.8	
78231	6.5		78494	15.4		78807	14.2	
78232	6.9		78496	9.4		79200	8.4	
78258	8.7		78600	7.4		79440	8.1	
78261	10.1		78601	8.6				
78262	10.2		78605	8.2				

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MEDICINE

Fees include both the technical and professional components. In the absence of any prior agreement, the professional component shall be thirty-five percent of the scheduled fee.

Vaccines, Toxoids

Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days
90715	1.4							

Psychiatry

Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days
90832	2.2		90846	3.4		90853	1.2	
90837	4.4		90847	4.3				
90845	3.2		90849	1.3				

Biofeedback

Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days
90901	1.5							

Dialysis

Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days
90935	2.6		90937	4.1		90997	3.6	

Ophthalmology

Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days
92002	3.3		92020	1.1		92235	4.4	
92004	6.0		92071	1.3		92326	1.7	
92012	3.3		92072	4.7				
92014	4.8		92230	2.5				

Special Otorhinolaryngologic Services

Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days
92508	1.3		92545	1.5		92568	0.6	
92541	2.0		92547	0.7		92577	0.8	
92542	2.0		92548	4.2		92584	3.1	
92543	0.9		92557	1.8		92587	1.8	
92544	1.6		92567	0.8		92588	2.6	

Cardiovascular

Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days
92953	0.5		93005	0.6		93226	2.8	
92970	6.5		93010	0.3		93227	1.1	
92971	3.5		93015	4.0		93268	9.6	
92975	14.1		93017	2.5		93270	1.4	
92977	8.4		93018	0.6		93272	1.0	
92978	10.0		93024	4.3		93278	1.8	
92979	5.8		93040	0.5		93303	8.1	
92997	24.1		93042	0.3		93307	7.3	
92998	12.1		93224	5.6		93308	4.0	
93000	0.9		93225	1.7		93312	11.4	

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Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days
93313	2.0		93600	7.1		93620	36.7	
93316	1.6		93602	5.7		93623	13.2	
93320	3.3		93603	6.7		93640	17.6	
93321	1.7		93609	14.7		93641	22.3	
93325	2.4		93610	7.8		93642	19.2	
93503	4.7		93612	8.2		93650	21.1	
93561	1.7		93615	2.2		93660	7.5	
93562	0.8		93618	14.3		93724	11.2	
93571	11.1		93619	26.0				

Noninvasive Vascular Diagnostic Studies

Code	Unit Value	Code	Unit Value
93980	7.1	93981	5.7

Pulmonary

Code	Unit Value	Code	Unit Value	Code	Unit Value
94014	1.8	94662	1.2	94761	0.4
94015	1.1	94680	2.4	94762	1.3
94016	0.9	94681	3.1	94770	1.6
94070	3.7	94690	2.1		
94620	3.6	94760	0.2		

Allergy and Clinical Immunology

Code	Unit Value	Code	Unit Value	Code	Unit Value
95052	0.3	95071	3.2	95117	0.6
95070	2.5	95115	0.5	95170	0.4

Neurology and Neuromuscular Procedures

Code	Unit Value	Code	Unit Value	Code	Unit Value
95805	18.7	95885	2.6	95909	6.4
95806	8.9	95887	3.2	95910	8.5
95851	0.7	95905	3.2	95911	10.2
95861	6.7	95907	4.4	95912	11.9
95863	8.1	95908	4.7	95913	13.8

Central Nervous System Assessments/Tests (eg, Neuro-Cognitive, Mental Status, Speech Testing)

Code	Unit Value
96101	2.9

Hydration, Therapeutic, Prophylactic, Diagnostic Injections and Infusions, and Chemotherapy and Other Highly Complex Drug or Highly Complex Biologic Agent Administration

Code	Unit Value	Code	Unit Value	Code	Unit Value
96360	2.4	96405	3.3	96542	5.8
96361	0.7				

Photodynamic Therapy

Code	Unit Value	Code	Unit Value
96570	2.1	96571	1.0

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Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days

Physical Medicine and Rehabilitation

Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days
97001	3.0		97016	0.72		97124	1.0	
97002	1.6		97032	0.7		97140	1.1	
97003	3.3		97110	1.3		97530	1.4	
97012	0.6		97112	1.3				
97014	0.5		97116	1.1				

Code	Description	Unit Value
97545A	Work hardening, per hour, maximum 4 hours	1.5

Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days
97750	1.2		97760	1.5	

Chiropractic Manipulative Treatment

Code	Unit Value
98940	0.9

Special Services, Procedures and Reports

Code	Unit Value	Code	Unit Value
99070	HAR	99080	2.6

DENTAL SERVICES

Diagnostic

Code	Unit Value	Code	Unit Value	Code	Unit Value
D0210	2.6	D0230	0.4	D0272	0.9
D0220	0.5	D0240	1.0	D0330	2.4

Restorative

Code	Unit Value	Code	Unit Value	Code	Unit Value
D2140	2.0	D2530	16.9	D2910	1.9
D2150	2.5	D2710	14.5	D2920	2.1
D2160	3.0	D2720	16.5	D2931	4.5
D2161	3.7	D2740	21.9	D2932	4.4
D2330	2.2	D2750	21.4	D2950	4.8
D2331	3.3	D2751	18.1	D2951	1.1
D2332	4.3	D2752	19.4	D2952	6.8
D2335	5.2	D2790	19.8	D2954	5.3
D2510	12.3	D2791	16.4	D2961	13.9
D2520	14.1	D2792	18.4	D2962	20.9

Endodontics

Code	Unit Value	Code	Unit Value	Code	Unit Value
D3220	2.9	D3353	3.5	D3426	1.1
D3310	10.7	D3410	8.0	D3430	2.0
D3320	13.9	D3421	8.6	D3450	9.4
D3330	17.8	D3425	9.7		

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Periodontics

Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days
D4210	11.7		D4260	21.9		D4910	3.8	
D4211	6.5		D4341	4.5				

Prosthodontics, Removable

Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days
D5110	26.6		D5281	15.0		D5660	5.5	
D5120	26.6		D5510	3.5		D5730	7.1	
D5130	27.9		D5520	3.5		D5731	7.1	
D5140	27.9		D5610	3.7		D5740	6.6	
D5211	23.0		D5620	5.7		D5741	6.6	
D5212	23.0		D5630	5.5		D5751	10.2	
D5213	27.1		D5640	3.6		D5760	9.7	
D5214	27.1		D5650	4.7		D5761	9.7	

Prosthodontics, Fixed

Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days
D6210	18.3		D6251	13.3		D6780	19.4	
D6211	15.6		D6252	14.7		D6790	19.8	
D6212	17.4		D6545	6.4		D6791	16.4	
D6240	19.5		D6720	16.5		D6792	18.4	
D6241	17.1		D6750	21.4		D6930	3.5	
D6242	18.9		D6751	18.1				
D6250	14.6		D6752	19.4				

Oral and Maxillofacial Surgery

Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days
D7140	2.4		D7310	6.3		D7970	8.0	
D7210	5.4		D7320	8.1		D7971	4.1	
D7250	6.5		D7510	3.5				
D7270	9.3		D7960	5.7				

Adjunctive General Services

Code	Unit Value	Follow-up Days
D9110	2.2	

EVALUATION AND MANAGEMENT

Office or Other Outpatient Services

Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days
99201	1.9		99205	8.1		99214	4.1	
99202	3.0		99211	0.8		99215	5.7	
99203	4.5		99212	1.8				
99204	6.5		99213	2.7				

Hospital Inpatient Services

Code	Unit Value	Follow-up Days
99232	2.4	

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Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days

Emergency Department Services

Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days
99281	1.5		99283	3.3		99285	6.8	
99282	2.1		99284	4.9				

Special Evaluation and Management Services

Code	Description	Unit Value
99456A*	Complex consultation pursuant to Section 386-79, HRS - work related or medical disability examination by other than the treating physician that includes: ▪ completion of a medical history commensurate with the patient's condition; ▪ performance of an examination commensurate with the patient's condition; ▪ formulation of a diagnosis, assessment of capabilities and stability, and calculation of impairment; ▪ development of future medical treatment plan; ▪ completion of necessary documentation/certificates and report; and ▪ review of records relating to the patient's condition. First hour	6.0
99456B*	Each additional 30 minute increment (an increment must be at least 30 minutes.)	3.0

*Department of Labor Code

Bundled Services: Certain codes, such as telephone calls, are considered by the Health Care Financing Administration (HCFA) to be "bundled" services. Bundled services are not payable, nor should they be billed, when performed incident to or in conjunction with another service even if the other service is performed on a different day. When services that are designated as bundled are denied, the physician may not collect from the patient.

HAR: Use pertinent Hawaii Administrative Rule.

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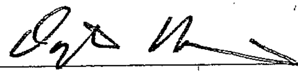
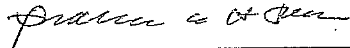
The amendments to Title 12, Chapter 15, Hawaii Administrative Rules, relating to the Hawaii Workers' Compensation Medical Fee Schedule; and Exhibit A, entitled "Workers' Compensation Supplemental Medical Fee Schedule", on the Summary Page dated November 21, 2013 were adopted on November 21, 2013 following a public hearing held on October 30, 2013, after public notice was given in the Honolulu Star-Advertiser, Hawaii Tribune-Herald, West Hawaii Today, The Maui News, and The Garden Island on September 30, 2013.

The amendments shall take effect ten days after filing with the Office of the Lieutenant Governor.



DWIGHT TAKAMINE
Director
Labor & Industrial Relations

APPROVED AS TO FORM:



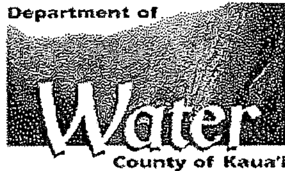
Deputy Attorney General

NEIL ABERCROMBIE
GOVERNOR
STATE OF HAWAII

Dated:

Filed

Exhibit 3



Water has no substitute.......Conserve it

November 27, 2013

Small Business Regulatory Review Board (SBRRB)
DBEDT – Business Support Division
P.O. Box 2359
Honolulu, HI 96804

Dear SBRRB:

**Subject: Kaua'i Department of Water's Proposed Rule Amendment to the Rules and Regulations of the Kaua'i County Department of Water:
"Proposed Amendments to Part II of the Rules and Regulations for Water Service Connections":
Section IX – Adjustments of Bills for Undetected Leaks and Unforeseen Damages – Amendments to Section**

Pursuant to Section – 3 of Act 168 (98) and revised in Act 202 (02), we are transmitting on behalf of the Kaua'i Board of Water Supply, Department of Water, a draft Small Business Impact Statement for our proposed rule amendment above. The proposed Rule Amendment is also attached.

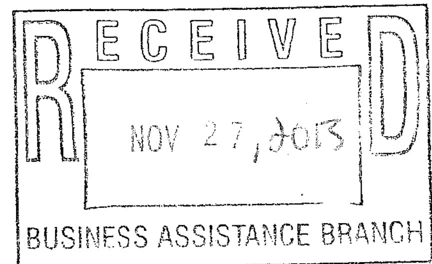
As we seek your approval to allow this proposed rule change go to public hearing, may we request that this matter be placed on the SBRRB's December 11, 2013 meeting please? Could we please get a copy of the December 11th's SBRRB meeting agenda as soon as it is published and a copy of the results after the meeting? You can fax it to us at (808) 246-8628 Attn: Mj Garasi, or e-mail it to mgarasi@kauaiwater.org

If we are able to attend the December 11th meeting, we plan to make a presentation to the SBRRB and would appreciate the notification of confirmation in receiving our request.

We very much appreciate your assistance. If you have any questions, please do not hesitate to call me at (808) 245-5408.

Sincerely,

Kirk Saiki, P.E.
Acting Manager and Chief Engineer



CC: Ricky Watanabe

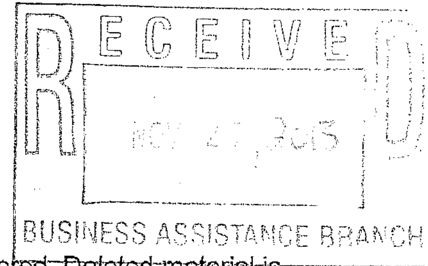
mjg
Attachments: Small Business Impact Statement
Part 2, Section IX Rule Amendment

Rules/DOW – SBRRB – Request to be on December 2013 SBRRB Agenda re Part 2 Section IX Rule Amendment:mjg (11-27-13)

DEPARTMENT OF WATER

County of Kaua'i

"Water has no Substitute – Conserve It!"



Administrative rule material to be repealed is bracketed. New material is underscored. ~~Deleted material is stricken through~~ or [bracketed.] In printing this rule amendment, the brackets, bracketed material, underscoring, strikes need not be included.

PART 2 SECTION IX - ADJUSTMENT OF BILLS FOR UNDETECTED UNDERGROUND LEAKS AND UNFORESEEN DAMAGES

1. The Department will reduce high water bills caused by undetected underground leaks in the consumer's supply pipe provided, however, that no ~~, by one half of the excess over the consumer's normal bill based on the previous six months' average. Adjustments will also~~ reduction in a water bill shall be allowed where the ~~high water bill~~ underground leak ~~was caused by some unforeseen circumstance such as~~ resulted from storm damage, flood, explosion, fire, ~~and~~ or acts of nature.

2. Before adjustment is made under this section, the ~~owner~~ consumer shall first request an adjustment and submit substantiating evidence and data ~~to warrant such an adjustment required~~ as may be requested by the Department to justify an adjustment in the water bill. The Department ~~shall make their determination based on the data presented and any other evidence as collected by the Department, if necessary.~~ may, but shall not be required, to conduct its own investigation of the high water bill.

~~2.~~ 3. An ~~A~~adjustment in a high water bill will be allowed only if the consumer exercises diligence in repairing and stopping the leak within ~~the period of~~ one week after ~~knowledge~~ that the consumer knew or should have known of an undetected underground leak. ~~age.~~ A consumer's knowledge of the leak may be inferred by the Department from a high water bill or notification from the Department.

~~3.~~ 4. No adjustments will be made for leakage due to faulty plumbing fixtures, or for leakage from exposed waterlines within ~~his property~~ the consumer's premises.

~~4.~~ 5. ~~Before adjustment is made under this section, the owner shall first request an adjustment and submit substantiating data to warrant such an adjustment if required by the Department. The Department shall make the determination based on the data presented and any other evidence as collected by the Department, if necessary.~~
If a consumer's request for adjustment is allowed, the reduction shall be equal to the difference between the consumer's average water bill for the 12 month period prior to the period resulting in the high water bill. The consumer's reduction or credit shall be calculated using the block one rate applicable to the meter size in the Department's General Use Rates.

Where the consumer has had water service for less than 12 months, the Manager shall make a good faith determination of the reduction.

6. A reduction in high water bills resulting from underground leaks shall be allowed only once in every two-year period, provided that the Department may, in its discretion, and for good cause, may consider and allow a request for reduction more frequently than once in a 2-year period.

---4398 Pua Loke Street, Lihu'e, Kaua'i, Hawai'i or P. O. Box 1706, Lihu'e, HI 96766-5706---
Phone No. (808) 245-5400 – Administration FAX No. (808) 246-8628 – Engineering/Fiscal/Shop FAX No. (808) 245-5813

PART 2 SECTION IX - ADJUSTMENT OF BILLS FOR UNDETECTED UNDERGROUND LEAKS AND UNFORESEEN DAMAGES

1. The Department will reduce high water bills caused by undetected underground leaks in the consumer's supply pipe provided, however, that no reduction in a water bill shall be allowed where the underground resulted from storm damage, flood, explosion, fire, or acts of nature.

2. Before adjustment is made under this section, the consumer shall first request an adjustment and submit substantiating evidence and data as may be requested by the Department to justify an adjustment in the water bill. The Department may, but shall not be required, to conduct its own investigation of the high water bill.

3. An adjustment in a high water bill will be allowed only if the consumer exercises diligence in repairing and stopping the leak within one week after that the consumer knew or should have known of an undetected underground leak. A consumer's knowledge of the leak may be inferred by the Department from a high water bill or notification from the Department.

4. No adjustments will be made for leakage due to faulty plumbing fixtures, or for leakage from exposed waterlines within the consumer's premises.

5. If a consumer's request for adjustment is allowed, the reduction shall be equal to the difference between the consumer's average water bill for the 12 month period prior to the period resulting in the high water bill. The consumer's reduction or credit shall be calculated using the block one rate applicable to the meter size in the Department's General Use Rates.

   Where the consumer has had water service for less than 12 months, the Manager shall make a good faith determination of the reduction.

6. A reduction in high water bills resulting from underground leaks shall be allowed only once in every two-year period, provided that the Department may, in its discretion, and for good cause, may consider and allow a request for reduction more frequently than once in a 2-year period.

ADJUSTMENT OF BILLS FOR UNDETECTED LEAKS AND UNFORESEEN DAMAGES WITHIN THE COUNTY OF KAUAI

NOVEMBER 25, 2013

SUMMARY OF THE PROPOSED RULE AMENDMENT:

PURSUANT TO ACT 168, 1998

PROPOSED RULE AMENDMENTS:

Every year, the Department of Water (DOW) provides $300,000 - $400,000 in leak rebates. To reduce this expenditure, DOW recommended that the Board of Water Supply (Board) eliminate Part 2 Section IX of the Rules and Regulations (Rule) in its entirety. Following discussions with the Board along with public comments, the DOW proposed to keep this rule with the proposed amendments.

The DOW has revised the Rule to limit the number of adjustments the consumer is allowed and have narrowed the allowable justification to undetected underground leaks. In addition, the consumer will now be required to sign an affidavit attesting that their submitted documents and claim is factual and the DOW will have the rights to recover the rebate if the consumer perjures themself.

The DOW has also revised the method of calculating leak adjustment rebates. DOW currently calculates leak adjustments based on dollars. We are now proposing to have the consumer pay 100 percent of their consumption charges at the first block rate applicable to the DOW's Rules and Regulations in Part 4, Fixing Rates for Water Services. Currently, a leak adjustment is calculated based on the consumer's six month average bill (dollars) minus the "high bill", then, divided in half. The consumer is responsible for 50 percent of the charges.

The proposed method of calculating the leak adjustment is based on the consumer's 12-month average consumption (gallons) minus the "high bill" consumption (gallons). Then, the difference is charged at the "Block 1" rate applicable to the meter size in the Department's General Use Rates.

Example: A consumer with a 5/8-inch water meter who uses an average of 15,000 gallons of water per month will have a monthly bill of $113.55. The consumer experiences a leak and water use increases to 45,000 gallons per month. The monthly bill for this leak will be $428.70. Using the current method of calculating a leak adjustment the consumer will be responsible for $157.58 of the leak. For the proposed method of calculating a leak adjustment the consumer will be responsible for $195.75.

IMPACT DETERMINATION:

It is DOW's opinion that the proposed leak adjustment amendments should have minimal impacts on small business. The proposed method of determining leak adjustment costs should produce similar results as the current method of determining leak adjustment costs.

Although the proposed requirements for qualifying for a leak adjustment are more stringent, this should not prevent small businesses with documented underground leaks from receiving a leak adjustment rebate. Aboveground leak adjustments were eliminated in the amended Rule because aboveground leaks are typically more noticeable by the consumer and should be repaired immediately.

Small businesses with agricultural water rates (farmers) will not benefit from the proposed leak adjustment amendments. DOW agricultural water rates are about 50 percent lower than the first block General Use Rate; therefore, using the proposed method of calculating a leak adjustment would effectively double charge rate for the leak. Farmers who buy their water at significantly lower costs are expected to be careful stewards of their purchased water. Also, they typically do not leave irrigation pipelines pressurized and are nearby to observe irrigation operations.

Exhibit A

Exhibit A

Chair's Monthly Report for

December 2013

1. Reviewed and approved memoranda of corresponding administrative rules reviewed at November board meeting
2. Approved and signed agency "introduction" letters
3. Board meeting preparation – December agenda, November minutes, review of noted administrative rules on agenda
4. Discussed with Dr. Scott Miscovich a complaint with this Board regarding non-processing of Workers' Compensation insurance which impacts stakeholders and practitioners – (see attached email, article)
5. Attended RegAlert committee meeting on Dec., 3, 2013

To:
Cc:
Bcc:
Subject: News tonight- Workers Comp-thanks! Chu lan

From: ssmhawaii@aol.com
Date: November 20, 2013 at 4:25:28 PM HST
To: clskwock@gmail.com
Subject: News tonight- Workers Comp-thanks!Chu lag,

Chu Lan,
I did want to thank you for your advice to reach out to the media to tell the story of Workers Comp and injuries in our state. A compelling story was presented to Keoki Kerr about injured State Hospital Workers and it aired on Hawaii news Now 9 days ago.
Today, an hour and a half press conference was held, and a senate investigation will occur in few weeks headed by Sen's Green and Hee. It will be on Hawaii News Now and KiTV, as well as the Advertiser. Part of the story is the poor attention given to injured workers and the lost time from work due to the insurance failures.
Mahalo for your support and inspiration, Scott Miscovich MD

-----Original Message-----
From: Chu Lan <clskwock@gmail.com>
To: ssmhawaii <ssmhawaii@aol.com>
Sent: Wed, Sep 25, 2013 4:55 pm
Subject: Re: Thanks for taking the time to meet

Mahalo and thanks for educating me on these issues.
Will help whenever I am able.
Chu Lan

Sent from my iPad

On Sep 25, 2013, at 4:15 PM, ssmhawaii@aol.com wrote:

> Chu Lan,
> Thanks for sharing your outstanding insight into the plight of our small businesses in our state. We certainly are fortunate to have in your current position. What was very evident to me is why you have this role. Clearly your passion and approach to life has led you be able to help those who don't have the voice or time to be represented.
> Thanks for offer to help our injured citizens of hawaii who have no voice. Please keep in touch and I will let you know when the HEMIC?Work Comp Summit is occurring.
> Attached is my Power Point of the framework of the meeting. Aloha Scott
> <Presentation7.pptx>

Patient attacks leave State Hospital employees out of work for months, years

KANEOHE, OAHU (HawaiiNewsNow) -

Severe assaults on employees at the state's only public mental hospital have resulted in some of them being out of work for months and even years, a Hawaii News Now investigation revealed. Four employees came forward to say the State Hospital is understaffed and they don't feel safe going to work.

The recent wars in Iraq and Afghanistan have left many U.S. military personnel with traumatic brain injury and post traumatic stress disorder.

But employees at the state hospital are suffering from those conditions as well, just from going to the office.

In December 2009, psychiatric technician Emelinda Yarte was leading a group of mental patients at the State Hospital up some stairs when she saw a patient start punching another staffer.

"I went back to help and then he slammed me on the wall and that's when my jaw got dislocated," Yarte said.

Her physician, Dr. Scott Miscovich, said Yarte suffered repeated blows to the head, jaw and neck when the patient, who was a mixed martial arts fighter, attacked her.

"I can't send these people back knowing the work environment is still very dangerous and nothing is being done to stop these assaults from happening again," Miscovich said.

Yarte has been out of work for nearly four years because of the attack. She returned to a part-time light-duty assignment doing clerical work at the state Health Department headquarters at Kinau Hale, across the island from the State Hospital, this fall.

"When I eat, I can't chew. And I had a hard time chewing. I had a hard time sleeping. Continuous headaches," she said.

Yarte said she suffered panic attacks when she tried to go back to the hospital.

"My kids cried because I wasn't myself anymore. I wasn't myself and as my son said, 'Whatever happened to you at the state hospital, we don't know, we don't understand you anymore,'" a tearful Yarte told Hawaii News Now.

Her psychologist has diagnosed her and other state hospital workers with Post Traumatic Stress Disorder.

"Nobody should have to go to work and not know if they're going to get kicked in the head or punched or have to get surgery for their shoulder when they walk out that day," said psychologist Mary Horn, who is treating about seven state hospital employees who have been hurt on the job.

"In order to be there, you need to be on your game. And after a while, when the risk is really high and your life is in jeopardy or you feel that your life is in jeopardy, you're not on your game," Horn said.

Another State Hospital employee, registered nurse Josh Akeo, said, "It's quite dangerous up there."

Akeo has been out of work for three months, since he stepped in to try to separate two mental patients fighting and was repeatedly kicked in the head by one of them. He suffered a severe concussion and jaw injury.

"I've lost a little over 30 pounds. I can't eat. I have a hard time opening my mouth. Causing a lot of headaches. I also got a neck injury," Akeo said.

"After what the doctor told me, he said the next kick in the head, the next punch in the head could end my life. That kind of stunned me. Because in that respect, I'm afraid to go to back to work."

Miscovich is treating about a half dozen State Hospital employees in what he calls a "cluster" of injuries in the last eight months.

Speaking about Akeo's medical problems, Miscovich said, "The most serious part of the injury that we're seeing is traumatic head injury. This is minimally a severe concussion. The whole way up to a patient with a traumatic brain injury."

Mark Fridovich is the adult mental health administrator for the state Health Department and oversees the State Hospital, which he used to run as its administrator for nearly seven years until this past March.

"Assaults do occur. We take each and every one of them very very seriously," Fridovich said. "The problem with assault is even a single incident of it can cause incredible harm to the worker and traumatic experience."

The state reported 90 assaults by patients on staff as of the end of August of this year. Last year, there were 120 reported staff assaults by patients, equating to roughly one every three days. In 2011, employees reported 132 assaults attributed to patients. Over the last three years, 16 of those assaults resulted in medical treatment and time away from work for employees.

"Each assault is assessed with respect to are there policy changes that need to occur?" Fridovich said. "When an incident occurs, we follow up immediately, provide support to the individual who's been hurt. We follow up in figuring out if there are patient factors, staff factors, policy changes, technical changes, environmental changes that might be used to make the situation more and more safe."

But employees who came forward to speak exclusively to Hawaii News Now said many of them don't bother to report routine assaults, such as a quick punch or a slap by a patient. So they estimate the true assault numbers could be as much as 50 percent higher. They said some supervisors discourage reporting assaults and other staffers are influenced by a "take one for the team" atmosphere in which they don't want to let down fellow members of their shift by going out on injured leave.

They blame under staffing for contributing to the assaults. Akeo is a charge nurse, who ran his unit during a shift.

"I can't even tell you how many times I've called to try to get extra staff and the response is 'We just don't have staff,'" Akeo said.

The state said there's a 34 percent vacancy rate for para-medical assistants, meaning as of last week there were 19 openings for those key employees who can help subdue unruly patients. The state reported 11 percent of the hospital's key front-line positions, including doctors, nurses, psychiatric technicians and para-medical assistants, are unfilled.

The state relies on overtime and temporary staff from agencies to fill the gaps, something Fridovich admitted is less than ideal.

"Those are adequate but sub-optimal. We would rather have full-time state workers in our open blocks," Fridovich said. "We'd much prefer to have the hospital staffing be more and more substantially permanent employees."

Employees said less-experienced agency or temporary staff can make difficult situations worse, because some of them are not used to dealing with dangerous, acutely mentally ill patients.

Some psychiatrists at the hospital's two wards with the most troubled patients sometimes have remained on the job for only a few days, weeks or months before leaving, employees said. One doctor who was an expert with child mental illness was not used to dealing with adults, and on-the-job injuries in his unit spiked during his brief tenure, employees said.

The facility is also very close to its legal capacity of 202 patients -- at 197 patients last week -- roughly 25 more than what the state calls its "target census," Fridovich said.

"We've raised that concern with the department, the governor's aware. We've briefed legislators on it. And we're making attempts to try to move ahead with more long-term interventions that will alleviate that census crunch," Fridovich added.

Another staffer, psychiatric technician Ryan Oyama, said he has endured about 60 assaults during his nearly 11 years on the job at the State Hospital. He said he went back to work the day after a patient attacked him without warning a couple of years ago.

"And he started punching. So I started trying to kind of duck the punches and he was catching me at my temple. And I think I blacked out because I don't remember what happened," Oyama said.

Oyama said the day after he and the other employees were interviewed on-camera by Hawaii News Now, his supervisor threatened him with termination for speaking out about problems there.

Fridovich responded to that situation by saying, "We take extremely seriously any allegation of staff intimidation. If that's occurred, we will look into it, it will be investigated. If the allegation is substantiated, we will follow through, I will follow through to ensure that appropriate discipline, or personnel action is taken."