



EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

GOV. MSG. NO. 839

July 11, 2006

The Honorable Robert Bunda, President
and Members of the Senate
Twenty-Third State Legislature
State Capitol, Room 003
Honolulu, Hawaii 96813

Dear Mr. President and Members of the Senate:

I am transmitting herewith HB1867 HD1 SD2 CD1, without my approval, and with the statement of objections relating to the measure.

HB1867 HD1 SD2 CD1

A BILL FOR AN ACT RELATING TO WORKERS'
COMPENSATION.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

VETO

A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that needless disruption
2 of medical care services is a recurring problem in workers'
3 compensation-related cases in the state and a serious impediment
4 to the cost-effective treatment and recovery of injured workers.

5 The legislature also finds that the purpose of section
6 386-21, Hawaii Revised Statutes, is to:

7 (1) Ensure that medical care, services, and supplies are
8 furnished to the injured worker promptly and
9 effectively;

10 (2) Prevent premature and improper termination of medical
11 care and its attendant financial, medical, and
12 psychological hardships; and

13 (3) Assist injured workers in achieving medical recovery
14 as rapidly as possible so that they may return to
15 gainful employment.

16 The purpose of this Act is to ensure that uninterrupted
17 medical care is provided to an injured worker, even if the
18 injured employee's employer denies further treatment, until the



1 director of labor and industrial relations renders a final
2 decision on the matter.

3 SECTION 2. Section 386-21, Hawaii Revised Statutes, is
4 amended by amending subsection (c) to read as follows:

5 "(c) The liability of the employer for medical care,
6 services, and supplies shall be limited to the charges computed
7 as set forth in this section. The director shall make
8 determinations of the charges and adopt fee schedules based upon
9 those determinations. [~~Effective January 1, 1997, and for each~~
10 ~~succeeding calendar year thereafter, the~~] The charges shall not
11 exceed one hundred ten per cent of fees prescribed in the
12 Medicare Resource Based Relative Value Scale system applicable
13 to Hawaii as prepared by the United States Department of Health
14 and Human Services, except as provided in this subsection. The
15 rates or fees provided for in this section shall be adequate to
16 ensure at all times the standard of services and care intended
17 by this chapter to injured employees.

18 If the director determines that an allowance under the
19 medicare program is not reasonable, or if a medical treatment,
20 accommodation, product, or service existing as of June 29, 1995,
21 is not covered under the medicare program, the director [~~may~~],
22 at any time, may establish an additional fee schedule or



1 schedules not exceeding the prevalent charge for fees for
2 services actually received by providers of health care services
3 to cover charges for that treatment, accommodation, product, or
4 service. If no prevalent charge for a fee for service has been
5 established for a given service or procedure, the director shall
6 adopt a reasonable rate that shall be the same for all providers
7 of health care services to be paid for that service or
8 procedure.

9 The director shall update the schedules required by this
10 section every three years or annually, as required. The updates
11 shall be based upon:

12 (1) Future charges or additions prescribed in the Medicare
13 Resource Based Relative Value Scale system applicable
14 to Hawaii as prepared by the United States Department
15 of Health and Human Services; or

16 (2) A statistically valid survey by the director of
17 prevalent charges for fees for services actually
18 received by providers of health care services or based
19 upon the information provided to the director by the
20 appropriate state agency having access to prevalent
21 charges for medical fee information.



1 When a dispute exists between an insurer or self-insured
2 employer and a medical service provider regarding the amount of
3 a fee for medical services, the director may resolve the dispute
4 in a summary manner as the director may prescribe; provided that
5 a provider shall not charge more than the provider's private
6 patient charge for the service rendered.

7 When a dispute exists between an injured employee and the
8 employer or the employer's insurer regarding whether medical
9 services should be continued, the injured employee shall
10 continue to receive the medical services prescribed under the
11 treatment plan last approved by the medical service provider
12 until the director issues a decision on whether the injured
13 employee's medical treatment should be continued. If the
14 director determines that medical services pursuant to the
15 treatment plan should be or should have been discontinued, the
16 director shall designate the date after which medical services
17 for that treatment plan are denied. The employer or the
18 employer's insurer may recover from the claimant's personal
19 health care provider or other appropriate occupation or non-
20 occupational insurer all the sums paid for medical services from
21 that treatment plan rendered after the date designated by the



1 director. Under no circumstances shall the claimant be charged
2 for the disallowed services."

3 SECTION 3. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

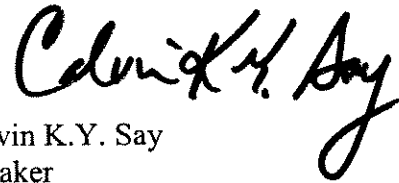
5 SECTION 4. This Act shall take effect on July 1, 2006.



THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 2, 2006
Honolulu, Hawaii

We hereby certify that the foregoing Bill on this day passed Final Reading in the House of Representatives of the Twenty-Third Legislature of the State of Hawaii, Regular Session of 2006.



Calvin K.Y. Say
Speaker
House of Representatives



Patricia Mau-Shimizu
Chief Clerk
House of Representatives

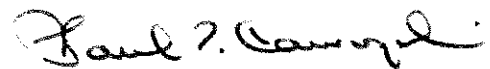
THE SENATE OF THE STATE OF HAWAII

Date: May 2, 2006
Honolulu, Hawaii

We hereby certify that the foregoing Bill on this day passed Final Reading in the Senate of the Twenty-Third Legislature of the State of Hawaii, Regular Session of 2006.



Robert Bunda
President of the Senate



Paul Kawaguchi
Clerk of the Senate

P R O C L A M A T I O N

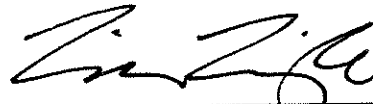
WHEREAS, under Section 16 of Article III of the Constitution of the State of Hawaii, the Governor is required to give notice, by a proclamation, of the Governor's plan to return with the Governor's objections any bill presented to the Governor less than ten days before adjournment sine die or presented to the Governor after adjournment sine die of the Legislature; and

WHEREAS, House Bill No. 1867, entitled "A Bill for an Act Relating to Workers' Compensation," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, House Bill No. 1867 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return House Bill No. 1867 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu,
State of Hawaii, this 26th
day of June, 2006.



LINDA LINGLE
Governor of Hawaii

EXECUTIVE CHAMBERS

HONOLULU

July 10, 2006

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 1867

Honorable Members
Twenty-Third Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 1867, entitled "A Bill for an Act Relating to Workers' Compensation."

This bill would extend medical services when a dispute exists between the injured employee and the employer or employer's insurer, until the Director of Labor and Industrial Relations (Director) issues a decision on whether medical care should continue. It allows the employer or employer's insurer to recover from the injured employee's personal health-care provider or other appropriate occupational or non-occupational insurer all sums paid for the disputed medical services after a designated date.

This bill is objectionable because it requires that an employer or employer's insurer continue to pay for medical treatments where the employer or employer's insurer considers the treatments proposed by the plan to be inappropriate, excessive, or for a non-compensable condition. In most cases these determinations are made after an independent medical examiner concludes the individual is ready to return to work.

This bill does not limit the type of medical service covered; thus, it could conceivably apply to all medical procedures, up to and including surgery. Further, it allows the medical treatments to continue solely on the decision of the medical provider who may not be a licensed physician.

Responsibility for paying for these extra treatments would rest with either the provider or the insurer if the Department of Labor and Industrial Relations subsequently decided

they were not needed. This could result in a situation where the insurer has to pay for medical services that were determined unwarranted and unnecessary, likely resulting in higher workers' compensation premiums since this adds to the workers' compensation risk exposure of all businesses in Hawaii. Alternatively, if providers are left with the bill, they may decide not to offer the treatment, which defeats the purpose of this measure.

The Department of Labor and Industrial Relations issued rules in May 2005 that improved the hearings process and mandated the use of evidence-based clinically tested, medical treatment guidelines and allowed for an alternative dispute resolution process in lieu of a Department of Labor and Industrial Relations hearing. These rules could have decreased the number of denials. Ironically, these are the rules the Legislature suspended last year when they denied the Director of the Department of Labor and Industrial Relations rulemaking authority in this area.

Finally, this bill fundamentally changes the balance between employer and employee regarding the method by which medical care can be terminated. It essentially overrides the workers' compensation medical fee schedule and negates the "reasonable and necessary" language in current Hawaii workers' compensation law, thereby placing in jeopardy the fiscal integrity of the State's workers' compensation system.

For the foregoing reasons, I am returning House Bill No. 1867 without my approval.

Respectfully,



LINDA LINGLE
Governor of Hawaii