
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 practice in the State of Hawaii and a serious
4 impediment to the cost effective treatment and recovery of
5 injured workers.

6 The purpose of this Act 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 such
11 care and its attendant financial, medical, and
12 psychological hardships; and
- 13 (3) Assist injured workers to achieve medical recovery as
14 rapidly as possible so they may return to gainful
15 employment.

16 SECTION 2. Section 386-21, Hawaii Revised Statutes, is
17 amended to read as follows:



1 **"§386-21 Medical care, services, and supplies. (a)**
2 Immediately after a work injury sustained by an employee and so
3 long as reasonably needed the employer shall furnish to the
4 employee all medical care, services, and supplies as the nature
5 of the injury requires. The liability for the medical care,
6 services, and supplies shall be subject to the deductible under
7 section 386-100.

8 (b) Whenever medical care is needed, the injured employee
9 may select any physician or surgeon who is practicing on the
10 island where the injury was incurred to render such care. If
11 the services of a specialist are indicated, the employee may
12 select any such physician or surgeon practicing in the State.
13 The director may authorize the selection of a specialist
14 practicing outside the State where no comparable medical
15 attendance within the State is available. Upon procuring the
16 services of such physician or surgeon, the injured employee
17 shall give proper notice of the employee's selection to the
18 employer within a reasonable time after the beginning of the
19 treatment. If for any reason during the period when medical
20 care is needed, the employee wishes to change to another
21 physician or surgeon, the employee may do so in accordance with
22 rules prescribed by the director. If the employee is unable to



1 select a physician or surgeon and the emergency nature of the
2 injury requires immediate medical attendance, or if the employee
3 does not desire to select a physician or surgeon and so advises
4 the employer, the employer shall select the physician or
5 surgeon. Such selection, however, shall not deprive the
6 employee of the employee's right of subsequently selecting a
7 physician or surgeon for continuance of needed medical care.

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

21 If the director determines that an allowance under the
22 medicare program is not reasonable, or if a medical treatment,



1 accommodation, product, or service existing as of June 29, 1995,
2 is not covered under the medicare program, the director may, at
3 any time, establish an additional fee schedule or schedules not
4 exceeding the prevalent charge for fees for services actually
5 received by providers of health care services to cover charges
6 for that treatment, accommodation, product, or service. If no
7 prevalent charge for a fee for service has been established for
8 a given service or procedure, the director shall adopt a
9 reasonable rate that shall be the same for all providers of
10 health care services to be paid for that service or procedure.

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

- 14 (1) Future charges or additions prescribed in the Medicare
15 Resource Based Relative Value Scale system applicable
16 to Hawaii as prepared by the United States Department
17 of Health and Human Services; or
- 18 (2) A statistically valid survey by the director of
19 prevalent charges for fees for services actually
20 received by providers of health care services or based
21 upon the information provided to the director by the



1 appropriate state agency having access to prevalent
2 charges for medical fee information.

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

9 (d) If it appears to the director that the injured
10 employee has wilfully refused to accept the services of a
11 competent physician or surgeon selected as provided in this
12 section, or has wilfully obstructed the physician or surgeon, or
13 medical, surgical, or hospital services or supplies, the
14 director may consider such refusal or obstruction on the part of
15 the injured employee to be a waiver in whole or in part of the
16 right to medical care, services, and supplies, and may suspend
17 the weekly benefit payments, if any, to which the employee is
18 entitled so long as such refusal or obstruction continues.

19 (e) Such funds as are periodically necessary to the
20 department to implement the foregoing provisions may be charged
21 to and paid from the special compensation fund provided by
22 section 386-151.



1 (f) In cases where the compensability of the claim is not
2 contested by the employer, the medical services provider shall
3 notify or bill the employer, insurer, or the special
4 compensation fund for services rendered relating to the
5 compensable injury within two years of the date services were
6 rendered. Failure to bill the employer, insurer, or the special
7 compensation fund within the two-year period shall result in the
8 forfeiture of the medical service provider's right to payment.
9 The medical service provider shall not directly charge the
10 injured employee for treatments relating to the compensable
11 injury.

12 (g) When medical treatment is denied by the employer to
13 the injured employee, the treatment denied shall promptly be
14 covered by the employee's prepaid health insurer, provided the
15 employee continues to have such coverage and the treatment is
16 normally afforded under the employee's prepaid health insurance
17 plan. If the medical treatment is determined to be compensable
18 by the director, the employer shall reimburse the prepaid health
19 insurer for the cost of the treatment in an amount provided by
20 the workers' compensation fee schedule. If the amount of
21 payment by the prepaid health insurer exceeds the amount payable
22 under workers' compensation, the medical provider shall



1 reimburse the excess to the prepaid health insurer. Any co-
2 payments made by the injured worker to the prepaid health
3 insurer shall be reimbursed to the employee by the prepaid
4 health insurer."

5 SECTION 3. New statutory material is underscored.

6 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY:

BT

Kirk Caldwell

JAN 19 2006



HB 1893

Report Title:

Workers' Compensation; Medical

Description:

Requires prepaid health insurance to provide benefits to an employee when workers' compensation coverage is denied.

