
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 the workers'
2 compensation insurance market is necessary for the economic
3 welfare of the state, and that without adequate and affordable
4 workers' compensation insurance, the orderly growth and economic
5 development of the state would be impeded. Adequate and
6 affordable insurance for workers' compensation is also necessary
7 to enable employers to satisfy their legal obligations under
8 chapter 386, Hawaii Revised Statutes (HRS).

9 For these reasons, the legislature enacted Act 261, Session
10 Laws of Hawaii (SLH) 1996, to replace the existing workers'
11 compensation assigned risk pool with a statutorily established
12 nonprofit corporation known as the Hawaii Employers' Mutual
13 Insurance Company (HEMIC). The purpose of HEMIC is to provide
14 workers' compensation coverage for Hawaii employers, including
15 employers who have in good faith, but without success, sought
16 workers' compensation insurance in the voluntary market.

17 Act 261 also required insurers in the voluntary market and
18 rating organizations to identify the overall cost savings



1 resulting from this law and to incorporate the savings into the
2 rates for new and renewal policies issued between July 1, 1996,
3 to January 31, 2000. The legislature intended these provisions
4 to provide desperately-needed premium relief to employers while
5 the legislation establishing HEMIC was implemented.

6 Act 261 had a dramatic impact on the workers' compensation
7 insurance industry. Total premiums paid and losses experienced
8 were reduced from a high of \$339,000,000 and \$223,000,000,
9 respectively, in 1993, to lows in 1999 of \$157,000,000 and
10 \$110,000,000.

11 However, once the period during which cost savings were to
12 be incorporated into rates ended, total premiums paid rose
13 drastically. Between 1999 and 2003, total premiums collected
14 increased from \$157,000,000 to \$308,000,000, an increase of
15 ninety-six per cent. During that same time, loss costs
16 experienced only a modest adjustment, increasing from
17 \$116,000,000 in 2001 to \$128,000,000 in 2003, or roughly ten per
18 cent.

19 The legislature further finds that the insurance
20 commissioner is empowered to initiate proceedings for
21 appropriate relief, including but not limited to proceedings to
22 roll back rates whenever it appears to the commissioner that an



1 insurer or other interested person regulated under article 14 of
2 chapter 431, HRS, affecting workers' compensation insurance
3 rates has set or applied any rate, classification, charge, or
4 rule affecting workers' compensation insurance that is
5 unreasonable. Despite having this authority, the insurance
6 commissioner has allowed workers' compensation insurance premium
7 rates to increase by ninety-six per cent regardless of the fact
8 that loss costs rose only ten per cent during that same time
9 period.

10 The legislature asserts that Act 261 and other reform
11 legislation approved during the mid-1990s has effectively
12 stabilized workers' compensation insurance loss costs. The
13 legislature also finds that a key element to the stabilization
14 of loss costs was the enactment of Act 234, SLH 1995, which,
15 among other things, limited charges in workers' compensation
16 cases to one hundred ten per cent of fees prescribed by the
17 Medicare Resource Based Relative Value Scale system applicable
18 to Hawaii as prepared by the United States Department of Health
19 and Human Services.

20 While the statute specifically references a particular
21 medicare fee schedule, there are numerous other fee schedules
22 that apply to hospital inpatient, hospital outpatient,



1 ambulatory care, and others. For many of these types of
2 services, because the other fee schedules are not specifically
3 referenced, physicians and other health care providers are able
4 to charge fees at usual and customary prices which in turn
5 raises the cost for employers.

6 The legislature believes that the application of all
7 medicare fee schedules would further reduce loss costs in
8 workers' compensation cases. However, to ensure that these
9 savings will be passed on to employers, statutory mechanisms
10 must also be established to require insurers and rating
11 organizations to incorporate these savings in future rate
12 filings.

13 Accordingly, the purpose of this Act is to apply all
14 medicare fee schedules in workers' compensation cases and
15 establish mechanisms to ensure that the resulting cost savings
16 are reflected in future premium rates.

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

19 "(c) The liability of the employer for medical care,
20 services, and supplies shall be limited to the charges computed
21 as set forth in this section. The director shall make
22 determinations of the charges and adopt fee schedules based upon



1 those determinations. Effective January 1, 1997, and for each
2 succeeding calendar year thereafter, the charges shall not
3 exceed one hundred ten per cent of fees prescribed [~~in~~] by the
4 Medicare Resource Based Relative Value Scale system applicable
5 to Hawaii [~~as prepared~~] and administered by the United States
6 Department of Health and Human Services, except as provided in
7 this subsection. Effective January 1, 2007, and for each
8 succeeding calendar year thereafter, the charges shall not
9 exceed one hundred ten per cent of fees prescribed by the
10 medicare system applicable to Hawaii and administered by the
11 United States Department of Health of Health and Human Services,
12 except as provided in this subsection. The rates or fees
13 provided for in this section shall be adequate to ensure at all
14 times the standard of services and care intended by this chapter
15 to injured employees.

16 If the director determines that an allowance under the
17 medicare program is not reasonable, or if a medical treatment,
18 accommodation, product, or service existing as of June 29, 1995,
19 is not covered under the medicare program, the director may, at
20 any time, establish an additional fee schedule or schedules not
21 exceeding the prevalent charge for fees for services actually
22 received by providers of health care services to cover charges



1 for that treatment, accommodation, product, or service. If no
2 prevalent charge for a fee for service has been established for
3 a given service or procedure, the director shall adopt a
4 reasonable rate that shall be the same for all providers of
5 health care services to be paid for that service or procedure.

6 The director shall update the schedules required by this
7 section every three years or annually, as required. The updates
8 shall be based upon:

- 9 (1) Future charges or additions prescribed in the Medicare
10 Resource Based Relative Value Scale system applicable
11 to Hawaii as prepared by the United States Department
12 of Health and Human Services; or
13 (2) A statistically valid survey by the director of
14 prevalent charges for fees for services actually
15 received by providers of health care services or based
16 upon the information provided to the director by the
17 appropriate state agency having access to prevalent
18 charges for medical fee information.

19 When a dispute exists between an insurer or self-insured
20 employer and a medical service provider regarding the amount of
21 a fee for medical services, the director may resolve the dispute
22 in a summary manner as the director may prescribe; provided that



1 a provider shall not charge more than the provider's private
2 patient charge for the service rendered."

3 SECTION 3. (a) Commencing February 1, 2007, all
4 authorized insurers transacting workers' compensation insurance
5 in this state shall identify overall cost savings resulting from
6 the implementation of this Act and shall apply the cost savings
7 as a reduction of the rates for all policies containing workers'
8 compensation coverage in effect on January 31, 2007, for each
9 new and renewal policy, and provide that the new rates shall be
10 in effect and filed during the period February 1, 2007, to
11 January 31, 2008. The cost savings identified shall have been
12 applied equitably to all policyholders. There shall be no
13 exception to the requirements of this subsection unless the
14 commissioner pursuant to an insurer's petition shall find that
15 the use of the rates required by an insurer will be inadequate
16 to the extent that the rates jeopardize the solvency of the
17 insurer required to use such rates.

18 (b) Commencing February 1, 2008, all authorized insurers
19 transacting workers' compensation insurance in this state shall
20 identify overall cost savings resulting from the implementation
21 of this Act and shall apply the cost savings as a reduction of
22 the rates for all policies containing workers' compensation



1 coverage in effect on January 31, 2008, for each new and renewal
2 policy, and provide that the new rates shall be in effect and
3 filed during the period February 1, 2008, to January 31, 2009.

4 (c) Commencing February 1, 2009, all authorized insurers
5 transacting workers' compensation insurance in this state shall
6 identify overall cost savings resulting from the implementation
7 of this Act and shall apply the cost savings as a reduction of
8 the rates for all policies containing workers' compensation
9 coverage in effect on January 31, 2009, for each new and renewal
10 policy, and provide that the new rates shall be in effect and
11 filed during the period February 1, 2009, to January 31, 2010.

12 SECTION 4. (a) Commencing November 1, 2006, any workers'
13 compensation rating or advisory organization shall identify
14 overall cost savings resulting from the implementation of this
15 Act and shall apply the cost savings to a prospective loss cost
16 which shall be in effect and filed during the period from
17 November 1, 2006, to October 31, 2007. The cost savings shall
18 be applied equitably to all policyholders.

19 (b) Commencing November 1, 2007, any workers' compensation
20 rating or advisory organization shall identify overall cost
21 savings resulting from the implementation of this Act and shall
22 apply the cost savings to a prospective loss cost which shall be



1 in effect and filed during the period from November 1, 2007, to
2 October 31, 2008.

3 (c) Commencing November 1, 2008, any workers' compensation
4 rating or advisory organization shall identify overall cost
5 savings resulting from the implementation of this Act and shall
6 apply the cost savings to a prospective loss cost which shall be
7 in effect and filed during the period from November 1, 2008, to
8 October 31, 2009.

9 SECTION 5. (a) Except as otherwise provided in this Act,
10 all rates or loss costs for workers' compensation insurance
11 shall comply with the provisions contained in chapter 431,
12 Hawaii Revised Statutes. Any insurer or rating organization
13 which contends that the rate provided for in this Act is
14 inadequate shall state in its filing the rate it contends is
15 appropriate and shall state with specificity the factors or data
16 which it contends should be considered to produce such
17 appropriate rate. The insurer shall be permitted to use all of
18 the generally accepted actuarial techniques in making any filing
19 pursuant to this subsection. It shall be the insurer's or
20 rating organization's burden to actuarially justify any increase
21 above the reduced rates provided for in this Act. The insurer
22 or rating organization shall include in the filing the expected



1 impact of this Act, where appropriate, on losses, expenses, and
2 rates.

3 (b) Any rate filing in which it is contended that the
4 rates established in this Act are inadequate shall be filed no
5 later than sixty days prior to the applicable filing date for
6 those rates. The insurance commissioner shall review and
7 approve or disapprove the rate filing not later than thirty days
8 prior to the applicable filing date.

9 (c) A filing shall be deemed to meet the workers'
10 compensation rate filing requirements unless disapproved by the
11 commissioner within the waiting period or any extension thereof.
12 All filings submitted under this Act shall be deemed public
13 records. All filings submitted under this Act shall be exempt
14 from chapter 92-41, Hawaii Revised Statutes. The public hearing
15 notice shall be filed with the office of the lieutenant governor
16 at least six calendar days before the public hearing.

17 (d) If a filing is approved under this Act, a contested
18 case hearing in accordance with chapter 91, Hawaii Revised
19 Statutes, may be convened. Notwithstanding any law to the
20 contrary, a petition and demand for hearing shall not stay the
21 implementation of rates approved by the commissioner or the
22 rates currently in effect, whichever is higher. A final order



1 of the commissioner may be appealed in accordance with chapter
2 91, Hawaii Revised Statutes.

3 (e) If a filing is disapproved in whole or in part, the
4 insurer or rating organization may file a petition and demand
5 contested case hearing in accordance with chapter 91, Hawaii
6 Revised Statutes. The insurer or rating organization shall have
7 the burden of proving that the disapproval is not justified.
8 While the action of the commissioner in disapproving the rate
9 filing is being challenged, the aggrieved insurer shall be
10 entitled to charge the rates currently in effect while the
11 action of the commissioner is being challenged and contested.

12 (f) Upon final disposition, pursuant to chapter 91, Hawaii
13 Revised Statutes, or by a court of competent jurisdiction, of
14 the insurance commissioner's approval or disapproval of the
15 rates, the insurance commissioner shall immediately determine
16 and order that the insurer make the appropriate rebates of
17 premiums to policyholders or allow the insurer to exact a
18 surcharge on premiums.

19 SECTION 6. If any provision of this Act, or the
20 application thereof to any person or circumstance is held
21 invalid, the invalidity does not affect other provisions or
22 applications of the Act which can be given effect without the



1 invalid provision or application, and to this end the provisions
2 of this Act are severable.

3 SECTION 7. This Act does not affect rights and duties that
4 matured, penalties that were incurred, and proceedings that were
5 begun, before its effective date.

6 SECTION 8. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 9. This Act shall take effect upon its approval.



HB2450 HD1

Report Title:

Workers' Compensation; Medicare Fee Schedule; Insurance Rates

Description:

Effective January 1, 2007, requires that the application of all Medicare fee schedules, rather than just the Medicare Resource Based Relative Value Scale, apply to workers' compensation claims. Required workers' compensation insurers to identify overall cost savings and apply them to rates on new and renewal policies issued between February 1, 2007 and January 31, 2010.
(HB2450 HD1)

