
A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION.

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

1 PART I

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

6 The legislature also finds that the purpose of section
7 386-21, Hawaii Revised Statutes, is to:

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

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

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

17 The purpose of this part is to ensure that uninterrupted
18 medical care is provided to an injured worker, even if the



1 injured employee's employer denies further treatment, until the
2 director of labor and industrial relations renders a final
3 decision on the matter.

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

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

19 If the director determines that an allowance under the
20 medicare program is not reasonable, or if a medical treatment,
21 accommodation, product, or service existing as of June 29, 1995,
22 is not covered under the medicare program, the director may, at



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

14 PART II

15 SECTION 3. The legislature finds that improper termination
16 of ongoing temporary total disability benefits is a source of
17 much disruption and vexation to injured workers and those
18 medical and vocational providers who seek to restore them to
19 gainful employment. The legislature finds that premature
20 termination of such benefits causes both economic and
21 psychological hardship to the injured worker and interferes with
22 attempts to help them attain full medical and vocational



1 recovery. However, the adverse consequences of the cessation of
2 compensation may be cured simply by requiring prior review of
3 the action by the director of labor and industrial relations.

4 The purpose of this part is to revise the procedure for
5 terminating temporary total disability benefits to reduce the
6 adverse consequences for injured workers when these benefits are
7 improperly terminated.

8 SECTION 4. Section 386-31, Hawaii Revised Statutes, is
9 amended by amending subsection (b) to read as follows:

10 "(b) Temporary total disability. Where a work injury
11 causes total disability not determined to be permanent in
12 character, the employer, for the duration of the disability, but
13 not including the first three calendar days thereof, shall pay
14 the injured employee a weekly benefit at the rate of sixty-six
15 and two-thirds per cent of the employee's average weekly wages,
16 subject to the limitations on weekly benefit rates prescribed in
17 subsection (a), or if the employee's average weekly wages are
18 less than the minimum weekly benefit rate prescribed in
19 subsection (a), at the rate of one hundred per cent of the
20 employee's average weekly wages.



1 If an employee is unable to complete a regular daily work
2 shift due to a work injury, the employee shall be deemed totally
3 disabled for work for that day.

4 The employer shall pay temporary total disability benefits
5 promptly as they accrue to the person entitled [~~thereto~~] the
6 benefits without waiting for a decision from the director,
7 unless this right is controverted by the employer in the
8 employer's initial report of industrial injury. The first
9 payment of benefits shall become due and shall be paid no later
10 than on the tenth day after the employer has been notified of
11 the occurrence of the total disability, and thereafter the
12 benefits due shall be paid weekly except as otherwise authorized
13 pursuant to section 386-53.

14 The payment of these benefits shall [~~only~~] be terminated
15 only upon order of the director or if the employee is able to
16 resume work. When the employer is of the opinion that temporary
17 total disability benefits should be terminated because the
18 injured employee is able to resume work, the employer shall
19 notify the employee and the director in writing of an intent to
20 terminate the benefits at least two weeks prior to the date when
21 the last payment is to be made[-]; provided that if the injured
22 employee has not actually resumed work, temporary total



1 disability benefits shall continue to be paid until a decision
2 by the director terminates the benefits. The notice shall give
3 the reason for stopping payment and shall inform the employee
4 that the employee may make a written request to the director for
5 a hearing if the employee disagrees with the employer. Upon
6 receipt of the request from the employee, the director shall
7 conduct a hearing as expeditiously as possible and render a
8 prompt decision as specified in section 386-86. If the employee
9 is unable to perform light work, if offered, temporary total
10 disability benefits shall not be discontinued based solely on
11 the inability to perform or continue to perform light work.

12 An employer or insurance carrier who fails to comply with
13 this section shall pay not more than \$2,500 into the special
14 compensation fund upon the order of the director, in addition to
15 other penalties prescribed in section 386-92.

16 (1) If the director determines, based upon a review of
17 medical records and reports and other relevant
18 documentary evidence, that an injured employee's
19 medical condition may be stabilized and the employee
20 is unable to return to the employee's regular job, the
21 director shall issue a preliminary decision regarding
22 the claimant's entitlement and limitation to benefits



1 and rights under Hawaii's workers' compensation laws.
2 The preliminary decision shall be sent to the affected
3 employee and the employee's designated representative
4 and the employer and the employer's designated
5 representative and shall state that any party
6 disagreeing with the director's preliminary findings
7 of medical stabilization and work limitations may
8 request a hearing within twenty days of the date of
9 the decision. The director shall be available to
10 answer any questions during the twenty-day period from
11 the injured employee and affected employer. If
12 neither party requests a hearing challenging the
13 director's finding the determination shall be deemed
14 accepted and binding upon the parties. In any case
15 where a hearing is held on the preliminary findings,
16 any person aggrieved by the director's decision and
17 order may appeal under section 386-87.

18 A preliminary decision of the director shall
19 inform the injured employee and the employer of the
20 following responsibilities, benefits, and limitations
21 on vocational rehabilitation benefits that are

1 designed to facilitate the injured employee's early
2 return to suitable gainful employment:

3 (A) That the injured employee may invoke the
4 employee's rights under section 378-2, 378-32, or
5 386-142, or all of them, in the event of unlawful
6 discrimination or other unlawful employment
7 practice by the employer; and

8 (B) That after termination of temporary total
9 disability benefits, an injured employee who
10 resumes work may be entitled to permanent partial
11 disability benefits, which if awarded, shall be
12 paid regardless of the earnings or employment
13 status of the disabled employee at the time.

14 (2) If the rehabilitation unit determines that an injured
15 employee is not a feasible candidate for
16 rehabilitation and that the employee is unable to
17 resume the employee's regular job, it shall promptly
18 certify the same to the director. Soon thereafter,
19 the director shall conduct a hearing to determine
20 whether the injured employee remains temporarily
21 totally disabled, or whether the employee is

1 permanently partially disabled, or permanently totally
2 disabled."

3 PART III

4 SECTION 5. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

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



Report Title:

Workers' Compensation; Medical Treatment; TTD

Description:

Ensures that uninterrupted medical care is provided to an injured employee, even if the injured employee's employer denies further treatment, until the director of labor and industrial relations renders a final decision on the matter. Prevents the termination of temporary total disability benefits until the director of labor and industrial relations decides to terminate them. (SD1)

