

JAN 25 2006

S.B. NO. 2691

A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION LAW.

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

1 SECTION 1. Section 386-21, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§386-21 Medical care, services, and supplies. (a)**

4 Immediately after a work injury sustained by an employee and so
5 long as reasonably needed the employer shall furnish to the
6 employee all medical care, services, and supplies as the nature
7 of the injury requires. An employer shall not issue a denial of
8 care pending the outcome of an examination by an impartial
9 physician under section 386-80, Hawaii Revised Statutes, or of
10 proceedings under section 386-86, Hawaii Revised Statutes. The
11 liability for the medical care, services, and supplies shall be
12 subject to the deductible under section 386-100.

13 (b) Whenever medical care is needed, the injured employee
14 may select any physician or surgeon who is practicing on the
15 island where the injury was incurred to render such care. If
16 the services of a specialist are indicated, the employee may
17 select any [~~such~~] physician or surgeon specialist practicing in
18 the State. If the treating physician requests a diagnostic



1 study or subspecialty consultation, the patient may select any
2 physician or surgeon practicing in the State. The director may
3 authorize the selection of a specialist practicing outside the
4 State where no comparable medical attendance within the State is
5 available. Upon procuring the services of [~~such~~] a physician,
6 [~~or~~] surgeon, or specialist, the injured employee shall give
7 proper notice of the employee's selection to the employer within
8 a reasonable time after the beginning of the treatment. If for
9 any reason during the period when medical care is needed, the
10 employee wishes to change to another physician or surgeon, the
11 employee may do so in accordance with rules prescribed by the
12 director. If the employee is unable to select a physician or
13 surgeon and the emergency nature of the injury requires
14 immediate medical attendance, or if the employee does not desire
15 to select a physician or surgeon and so advises the employer,
16 the employer shall select the physician or surgeon. Such
17 selection, however, shall not deprive the employee of the
18 employee's right of subsequently selecting a physician or
19 surgeon for continuance of needed medical care.

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



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

14 If the director determines that an allowance under the
15 medicare program is not reasonable, or if a medical treatment,
16 accommodation, product, or service existing as of June 29, 1995,
17 is not covered under the medicare program, the director may, at
18 any time, establish an additional fee schedule or schedules not
19 exceeding the prevalent charge for fees for services actually
20 received by providers of health care services to cover charges
21 for that treatment, accommodation, product, or service. If no
22 prevalent charge for a fee for service has been established for

1 a given service or procedure, the director shall adopt a
2 reasonable rate that shall be the same for all providers of
3 health care services to be paid for that service or procedure.

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

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

11 (2) A statistically valid survey by the director of
12 prevalent charges for fees for services actually
13 received by providers of health care services or based
14 upon the information provided to the director by the
15 appropriate state agency having access to prevalent
16 charges for medical fee information.

17 When a dispute exists between an insurer or self-insured
18 employer and a medical service provider regarding the amount of
19 a fee for medical services, the director may resolve the dispute
20 in a summary manner as the director may prescribe; provided that
21 a provider shall not charge more than the provider's private
22 patient charge for the service rendered.

1 (d) If it appears to the director that the injured
2 employee has wilfully refused to accept the services of a
3 competent physician or surgeon selected as provided in this
4 section, or has wilfully obstructed the physician or surgeon, or
5 medical, surgical, or hospital services or supplies, the
6 director may consider such refusal or obstruction on the part of
7 the injured employee to be a waiver in whole or in part of the
8 right to medical care, services, and supplies, and may suspend
9 the weekly benefit payments, if any, to which the employee is
10 entitled so long as such refusal or obstruction continues.

11 (e) Such funds as are periodically necessary to the
12 department to implement the foregoing provisions may be charged
13 to and paid from the special compensation fund provided by
14 section 386-151.

15 (f) In cases where the compensability of the claim is not
16 contested by the employer, the medical services provider shall
17 notify or bill the employer, insurer, or the special
18 compensation fund for services rendered relating to the
19 compensable injury within two years of the date services were
20 rendered. Failure to bill the employer, insurer, or the special
21 compensation fund within the two-year period shall result in the
22 forfeiture of the medical service provider's right to payment.

1 The medical service provider shall not directly charge the
2 injured employee for treatments relating to the compensable
3 injury.

4 (g) There shall be no denial of payment for physician-
5 prescribed medicine or supplies unless there is a determination
6 by the director of malingering or fraud."

7 SECTION 2. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY: Theranne Chun Oakland
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Report Title:

Workers' Compensation

Description:

Prohibits employers from issuing denials of treatment in workers' compensation cases pending an evaluation by an impartial physician or pending the outcome of a department hearing. Increases maximum allowable charges for medical care, services, and supplies.

