
A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION.

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

1 SECTION 1. Section 386-79, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "~~§386-79 [Medical examination by employer's physician.]~~

4 Medical examinations; selection of physicians. ~~[After an injury~~
5 ~~and during the period of disability, the employee, whenever~~
6 ~~ordered by the director of labor and industrial relations, shall~~
7 ~~submit to examination, at reasonable times and places, by a duly~~
8 ~~qualified physician or surgeon designated and paid by the~~
9 ~~employer. The employee shall have the right to have a physician~~
10 ~~or surgeon designated and paid by the employee present at the~~
11 ~~examination, which right, however, shall not be construed to~~
12 ~~deny to the employer's physician the right to visit the injured~~
13 ~~employee at all reasonable times and under all reasonable~~
14 ~~conditions during total disability.~~

15 ~~If an employee refuses to submit to, or in any way~~
16 ~~obstructs such examination, the employee's right to claim~~
17 ~~compensation for the work injury shall be suspended until the~~
18 ~~refusal or obstruction ceases and no compensation shall be~~



1 ~~payable for the period during which the refusal or obstruction~~
2 ~~continues.~~

3 ~~In cases where the employer is dissatisfied with the~~
4 ~~progress of the case or where major and elective surgery, or~~
5 ~~either, is contemplated, the employer may appoint a physician or~~
6 ~~surgeon of the employer's choice who shall examine the injured~~
7 ~~employee and make a report to the employer. If the employer~~
8 ~~remains dissatisfied, this report may be forwarded to the~~
9 ~~director.~~

10 ~~Employer requested examinations under this section shall~~
11 ~~not exceed more than one per case unless good and valid reasons~~
12 ~~exist with regard to the medical progress of the employee's~~
13 ~~treatment. The cost of conducting the ordered medical~~
14 ~~examination shall be limited to the complex consultation charges~~
15 ~~governed by the medical fee schedule established pursuant to~~
16 ~~section 386-21(e).] (a) Following an injury and after a claim~~
17 ~~is filed by the injured employee, the employer, upon mutual~~
18 ~~agreement of the parties, may appoint a qualified physician,~~
19 ~~paid by the employer, to conduct an independent medical~~
20 ~~examination or a permanent impairment rating examination of the~~
21 ~~injured employee and make a report to the employer. The~~
22 ~~employee or the employee's representative shall be promptly~~



1 provided with a copy of the report of the independent medical
2 examination or permanent impairment rating examination.

3 The director shall keep and maintain a list of qualified
4 physicians and their respective qualifications. If the employer
5 and the employee cannot agree on a physician to perform the
6 independent medical examination or permanent impairment rating
7 examination, the employer or employee may request in writing
8 that the physician be appointed by the director. Within seven
9 calendar days of the receipt of request, the director shall
10 appoint from the director's list of qualified physicians a
11 physician licensed in a relevant medical specialty, licensed to
12 practice in Hawaii, willing to undertake the examination, and
13 paid for by the employer.

14 Any physician mutually selected by the employer and
15 employee or appointed by the director shall examine the employee
16 within forty-five calendar days of selection or appointment or
17 as soon as practicably possible.

18 In no event shall an independent medical examination and a
19 permanent impairment rating examination be combined into a
20 single medical examination unless the injured employee consents
21 in writing prior to the scheduling of the examinations.



1 In no event shall the director, appellate board, or court
2 order more than one employer-requested independent medical
3 examination and one permanent impairment rating examination per
4 case, unless valid reasons exist with regard to the medical
5 progress of the employee's treatment or where major surgery and
6 elective surgery, or either, is contemplated.

7 If an employee refuses to submit to, or in any way
8 obstructs the examination, the employee's right to claim
9 compensation for the work injury shall be suspended until the
10 refusal or obstruction ceases and no compensation shall be
11 payable for the period during which the refusal or obstruction
12 continues. The cost of conducting the ordered independent
13 medical examination or permanent impairment rating examination
14 shall be limited to the complex consultation charges governed by
15 the medical fee schedule established pursuant to section
16 386-21(c).

17 A physician selected to perform an independent medical
18 examination or permanent impairment rating examination, as
19 provided in this subsection, shall be currently licensed
20 pursuant to chapter 453; except that upon approval by the
21 director, a physician who resides outside the State of Hawaii
22 and is licensed in another state as a physician equivalent to a



1 license under chapter 453, may be selected if there is no State
2 of Hawaii-licensed physician available in a relevant medical
3 specialty. Further, if the claimant does not reside in Hawaii,
4 a physician who resides outside the State of Hawaii and is
5 licensed in the state of the out-of-state claimant's residence
6 as a physician equivalent to a license under chapter 453 may be
7 selected. Upon approval of the director, a physician who
8 resides outside the state of the out-of-state claimant's
9 residence and is licensed in another state as a physician
10 equivalent to a license under chapter 453 may be selected if
11 there is no physician available in a relevant medical specialty
12 in the out-of-state claimant's state of residence.

13 (b) When an injured employee has attained medical
14 stability as determined by the injured employee's attending
15 physician, the employer may appoint a physician, paid by the
16 employer and selected by agreement of the parties, who shall
17 conduct a permanent impairment rating examination of the injured
18 employee pursuant to subsection (a).

19 For the purposes of this subsection, "medical stability"
20 means that no further improvement in the injured employee's
21 work-related condition can reasonably be expected from curative
22 health care or the passage of time."



1 SECTION 2. There is appropriated out of the general
2 revenues of the State of Hawaii the sum of \$ or so
3 much thereof as may be necessary for fiscal year 2013-2014 and
4 the same sum or so much thereof as may be necessary for fiscal
5 year 2014-2015 for the establishment of three full-time
6 equivalent (3.00 FTE) permanent workers' compensation hearings
7 officer positions and two full-time equivalent (2.00 FTE)
8 permanent office assistant positions in the disability
9 compensation division of the department of labor and industrial
10 relations to assist in workers' compensation claims.

11 The sums appropriated shall be expended by the department
12 of labor and industrial relations for the purposes of this Act.

13 SECTION 3. This Act does not affect rights and duties that
14 matured, penalties that were incurred, and proceedings that were
15 begun before its effective date.

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

18 SECTION 5. This Act shall take effect on July 1, 2050;
19 provided that:

20 (1) Section 2 shall take effect on July 1, 2013; and

21 (2) This Act shall be repealed on June 30, 2018, and

22 section 386-79, Hawaii Revised Statutes, shall be



1 reenacted in the form in which it read on the day
2 before the effective date of section 1 of this Act.
3



Report Title:

Workers' Compensation; Medical Examinations; Appropriation

Description:

Amends section 386-79, HRS, to require independent medical examinations and permanent impairment rating examinations for workers' compensation claims to be performed by physicians mutually agreed upon by employers and employees or appointed by the director of the department of labor and industrial relations. Allows for the use of an out-of-state physician under certain conditions. Appropriates unspecified funds. Effective 7/1/2050. Section 2 effective 7/1/13. Repeals on 6/30/2018. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

