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# SENATE CONCURRENT RESOLUTION

REQUESTING THE DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS TO CONTINUE TO RECOGNIZE AND ACCEPT THE RIGHT OF A PROVIDER OF SERVICE TO ASSIGN THE RIGHT TO PARTICIPATE IN A WORKERS' COMPENSATION BILLING DISPUTE TO A BILLING COMPANY; REVIEW THE WORKERS' COMPENSATION LAW FOR PROPOSED AMENDMENTS TO ENSURE THAT SERVICE PROVIDERS MAY ASSIGN THE RIGHT TO NEGOTIATE A BILL DISPUTE TO A BILLING COMPANY; AND INCLUDE THE PROPOSED AMENDMENTS IN A REPORT TO THE LEGISLATURE PRIOR TO THE REGULAR SESSION OF 2024.

1 WHEREAS, the Hawaii Territorial Legislature enacted the  
2 State's first workers' compensation law in 1915 to ensure that  
3 employees who were injured or disabled on the job were provided  
4 with medical treatment and fixed monetary awards; and  
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6 WHEREAS, this law was Hawaii's first "no-fault" legislation  
7 in that it mandated there be a presumption that an employee's  
8 injuries were "work-related", while prohibiting an employee from  
9 filing civil actions against the employer for work-related  
10 injuries or illnesses; and  
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12 WHEREAS, under existing law, any employer, including the  
13 state and county governments, employing one or more workers is  
14 required to provide workers' compensation coverage; and  
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16 WHEREAS, the workers' compensation law defines  
17 "compensation" to mean "all benefits accorded by this chapter to  
18 an employee or the employee's dependents on account of a work  
19 injury as defined in this section; it includes medical and  
20 rehabilitation benefits, income and indemnity benefits in cases  
21 of disability or death, and the allowance for funeral and burial  
22 expenses"; and  
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24 WHEREAS, as a business decision, employers frequently  
25 assign their rights to participate in a workers' compensation



1 billing dispute regarding prescription medication claims  
2 (dispute) to an insurance carrier or other billing review  
3 company; and  
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5 WHEREAS, section 12-15-1, Hawaii Administrative Rules  
6 (HAR), provides that a "provider of service" means any person or  
7 entity who is licensed, certified, recognized, or registered  
8 with the Department of Commerce and Consumer Affairs and who  
9 renders medical care, medical services, or medical supplies in  
10 accordance with chapter 386, Hawaii Revised Statutes (HRS); and  
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12 WHEREAS, section 12-15-94(c), HAR, provides that the  
13 provider of service may file a "bill dispute request" to include  
14 a copy of the original bill with the Director of Labor and  
15 Industrial Relations within sixty calendar days after postmark  
16 of the employer's objection, and failure to do so shall be  
17 construed as acceptance of the employer's denial; and  
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19 WHEREAS, section 386-57, HRS, relating to the legal status  
20 of right to compensation and compensation payments, provides  
21 that the right to compensation under chapter 386, HRS, shall:  
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23 (1) Not be assignable, and the right to compensation and  
24 compensation payments received shall be exempt from  
25 the reach of creditors; and  
26

27 (2) Have the same status as a lien or the same priority  
28 for the whole thereof with respect to the assets of  
29 the employer as are accorded by law to any unpaid  
30 wages for labor; and  
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32 WHEREAS, the Director of Labor and Industrial Relations has  
33 held since 2012, when the Director issued multiple decisions on  
34 this issue, and has repeatedly ruled consistently with those  
35 decisions, that section 386-57, HRS, is not applicable to a  
36 valid assignment of a dispute from a provider of service to a  
37 billing company because the section must be read in conjunction  
38 with the applicable definition of "compensation"; accordingly,  
39 section 386-57, HRS, only applies to the employee's or the  
40 employee's dependents' right to compensation, and a billing  
41 company assignee has "standing" to file a bill dispute request;  
42 and



1  
2 WHEREAS, since the 2012 decisions on standing were issued,  
3 the Director of Labor and Industrial Relations has recognized  
4 that billing companies are allowed to step into the shoes of a  
5 provider of service with the authority to participate in the  
6 dispute pursuant to section 12-15-94(d), HAR; and  
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8 WHEREAS, the Director of Labor and Industrial Relations has  
9 consistently intervened in reimbursement disputes at the request  
10 of billing companies and issued multiple decisions without  
11 wavering on the issue of standing; and  
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13 WHEREAS, the Legislature, in section 386-21.7, HRS, has  
14 also recognized the right of a provider of service's assignee to  
15 contract directly with an employer or carrier, or any entity  
16 acting on behalf of the employer or carrier, with regard to the  
17 payment for prescription drugs dispensed to an employee for a  
18 work injury; and  
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20 WHEREAS, Act 231, Session Laws of Hawaii 2014, which was  
21 codified into law as section 386-21.7, HRS, stated, "This Act  
22 does not restrict and is not intended to restrict the ability of  
23 any physician, hospital, pharmacy, or provider of service other  
24 than a physician to dispense, bill for, and receive payment for  
25 prescription drugs that are reasonably needed as the nature of  
26 the injury requires."; and  
27

28 WHEREAS, permitting a provider of service's assignee to  
29 contract directly with an employer or carrier, or any entity  
30 acting on behalf of the employer or carrier, with regard to the  
31 payment for prescription drugs dispensed to an employee for a  
32 work injury, and denying the assignee standing to participate in  
33 the dispute process would produce an absurd and unjust result  
34 and restrict the ability of a provider of service to receive  
35 payment for prescription drugs dispensed to an injured employee;  
36 and  
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38 WHEREAS, opponents of this well-established precedent have  
39 recently attempted to undermine the ability of a provider of  
40 service to assign their rights to participate in a dispute to a  
41 billing company; and  
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1 WHEREAS, citing an ambiguous decision by the Director of  
2 Labor and Industrial Relations that is currently under appeal,  
3 these opponents are using the same arguments that the Director  
4 considered and dismissed in the Director's 2012 decisions on  
5 standing, including claiming that section 386-57, HRS, prohibits  
6 the assignment of the right to participate in a dispute; and  
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8 WHEREAS, these opponents are urging employers and carriers  
9 to refuse to recognize the right of billing companies to  
10 participate in disputes; and  
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12 WHEREAS, if these opponents are successful, the outcome  
13 will restrict the ability of a provider of service to dispense,  
14 bill for, and receive payment for prescription drugs that are  
15 reasonably needed as the nature of the injury requires, contrary  
16 to the express language of Act 231, Session Laws of Hawaii 2014,  
17 and the intent of section 386-21.7, HRS; and  
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19 WHEREAS, such a restriction will adversely impact the main  
20 goal of the workers' compensation system, which is to heal  
21 injured workers and return them to work as soon as reasonably  
22 possible; and  
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24 WHEREAS, if these opponents are successful, employers and  
25 carriers may refuse to pay billings to a legitimate assignee  
26 billing company, causing a backlog in billing disputes with the  
27 Department of Labor and Industrial Relations; now, therefore,  
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29 BE IT RESOLVED by the Senate of the Thirty-second  
30 Legislature of the State of Hawaii, Regular Session of 2023, the  
31 House of Representatives concurring, that the Department of  
32 Labor and Industrial Relations is requested to continue to  
33 recognize and accept the right of a provider of service to  
34 assign the right to participate in a workers' compensation  
35 billing dispute to a billing company; and  
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37 BE IT FURTHER RESOLVED that the Department of Labor and  
38 Industrial Relations is further requested to review the State's  
39 Workers' Compensation Law for proposed amendments to ensure that  
40 service providers may assign the right to negotiate a bill  
41 dispute to a billing company; and  
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1 BE IT FURTHER RESOLVED that the Department of Labor and  
2 Industrial Relations is requested to include the proposed  
3 amendments in a report to the Legislature prior to the Regular  
4 Session of 2024; and

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6 BE IT FURTHER RESOLVED that a certified copy of this  
7 Concurrent Resolution be transmitted to the Director of Labor  
8 and Industrial Relations.

