

ACT 260

H.B. NO. 3512

A Bill for an Act Relating to Workers' Compensation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 386, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§386- Workers' compensation benefits facilitator unit.** (a) There is established within the department of labor and industrial relations the workers' compensation benefits facilitator unit. All professional and clerical employees of the unit shall be appointed by the director and shall be subject to chapters 76 and 77.

(b) Facilitators of the unit shall have the following duties and responsibilities:

- (1) Assist injured workers in filing their workers' compensation claims under this chapter;
- (2) Assist insurers, employers, and providers; and
- (3) Facilitate the workers' compensation claims process.

(c) All expenses incurred by the director in establishing the unit shall be paid from the special compensation fund.”

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

“(c) The liability of the employer for medical care, services, and supplies shall be limited to the charges computed as set forth in this section. The director shall make determinations of the charges and adopt fee schedules based upon those determinations. [As of June 29, 1995,] Effective January 1, 1997, and for each succeeding [fiscal] calendar year thereafter, the charges shall not exceed one hundred ten per cent of fees prescribed in the Medicare Resource Based Relative Value Scale system applicable to Hawaii as prepared by the United States Department of Health and Human Services, except as provided in this subsection. The rates or fees provided for in this section shall be adequate to ensure at all times the standard of services and care intended by this chapter to injured employees.

If the director determines that an allowance under the Medicare program is not reasonable, or if a medical treatment, accommodation, product, or service existing as of June 29, 1995, is not covered under the Medicare program, the director [shall,] may, at any time, establish an additional fee schedule or schedules not exceeding the prevalent charge for fees for services actually received by providers of health care services to cover charges for that treatment, accommodation, product, or service. If no prevalent charge for a fee for service has been established for a given service or procedure, the director shall adopt a reasonable rate that shall be the same for all providers of health care services to be paid for that service or procedure.

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

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

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

SECTION 3. Section 386-26, Hawaii Revised Statutes, is amended to read as follows:

**“§386-26 Guidelines on frequency of treatment and reasonable utilization of health care and services.** The director shall issue guidelines for the frequency of treatment and for reasonable utilization of medical care and services by health care providers that are considered necessary and appropriate under this chapter.

[The frequency and extent of treatment shall not exceed the nature of the injury and the process a recovery requires; provided that no authorization shall be required for the initial five treatments. After the initial five treatments, in accordance with guidelines established by the director under this chapter, the director may authorize no more than ten additional treatments. For injuries requiring more than

fifteen treatments, the director may authorize additional treatments upon a finding that such treatments are medically necessary and appropriate.]

The guidelines shall be adopted pursuant to chapter 91 and shall not interfere with the injured employee's rights to exercise free choice of physicians under section 386-21.

In addition, the director shall adopt updated medical fee schedules referred to in section 386-21 and where deemed appropriate shall establish separate fee schedules for services of health care providers as defined in section 386-1 to become effective no later than June 30, 1986, in accordance with chapter 91."

SECTION 4. Section 386-79, Hawaii Revised Statutes, is amended to read as follows:

**"§386-79 Medical examination by employer's physician.** After an injury and during the period of disability, the employee, whenever ordered by the director of labor and industrial relations, shall submit [oneself] to examination, at reasonable times and places, by a duly qualified physician or surgeon designated and paid by the employer. The employee shall have the right to have a physician or surgeon designated and paid by the employee present at the examination, which right, however, shall not be construed to deny to the employer's physician the right to visit the injured employee at all reasonable times and under all reasonable conditions during total disability.

If an employee refuses to submit [oneself] to, or in any way obstructs[,] such examination, the employee's right to claim compensation for the work injury shall be suspended until the refusal or obstruction ceases and no compensation shall be payable for the period during which the refusal or obstruction continues.

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

Employer requested examinations [ordered by the director] under this section shall not exceed more than one per case unless good and valid reasons exist with regard to the medical progress of the [claimant's] employee's treatment. The cost of conducting the ordered medical examination shall be limited to the complex consultation charges governed by the medical fee schedule established pursuant to section 386-21(c)."

SECTION 5. Section 386-98, Hawaii Revised Statutes, is amended to read as follows:

**"§386-98 Fraud violations and penalties.** (a) A fraudulent insurance act, under this chapter, shall include acts or omissions committed by any person who intentionally or knowingly [and fraudulently intends] acts or omits to act so as to obtain benefits, deny benefits, obtain benefits compensation for services provided, or provides legal assistance or counsel to obtain benefits or recovery through fraud or deceit by doing the following:

- (1) Presenting, or causing to be presented, any false information on an application;
- (2) Presenting, or causing to be presented, any false or fraudulent claim for the payment of a loss;
- (3) Presenting multiple claims for the same loss or injury, including presenting multiple claims to more than one insurer except when these

multiple claims are appropriate and each insurer is notified immediately in writing of all other claims and insurers;

- (4) Making, or causing to be made, any false or fraudulent claim for payment or denial of a health care benefit;
- (5) Submitting a claim for a health care benefit that was not used by, or on behalf of, the claimant;
- (6) Presenting multiple claims for payment of the same health care benefit;
- (7) Presenting for payment any undercharges for health care benefits on behalf of a specific claimant unless any known overcharges for health care benefits for that claimant are presented for reconciliation at that same time;
- [(8)] Assisting, abetting, soliciting, or conspiring with any person who engages in an unlawful act as defined under this section;
- [(9)] (8) Misrepresenting or concealing a material fact;
- [(10)] (9) Fabricating, altering, concealing, making a false entry in, or destroying a document;
- [(11)] (10) Making, or causing to be made, any false or fraudulent statements with regard to entitlements or benefits, with the intent to discourage an injured employee from claiming benefits or pursuing a workers' compensation claim; or
- [(12)] (11) Making, or causing to be made, any false or fraudulent statements or claims by, or on behalf of, a client with regard to obtaining legal recovery or benefits.

(b) No employer shall wilfully make a false statement or representation to avoid the impact of past adverse claims experience through change of ownership, control, management, or operation to directly obtain any workers' compensation insurance policy.

(c) It shall be inappropriate for any discussion on benefits, recovery, or settlement to include the threat or implication of criminal prosecution. Any threat or implication shall be immediately referred in writing to:

- (1) The state bar if attorneys are in violation;
- (2) The insurance commissioner if insurance company personnel are in violation; or
- (3) The regulated industries complaints office if health care providers are in violation; or
- (4) The department and the state ethics commission if hearings officers are in violation],

for investigation and, if appropriate, disciplinary action.

(d) [A criminal] An offense under [this section] subsections (a) and (b) shall constitute a:

- (1) Class C felony if the value of the moneys obtained or denied is not less than \$2,000;
- (2) Misdemeanor if the value of the moneys obtained or denied is less than \$2,000; or
- (3) Petty misdemeanor if the providing of false information did not cause any monetary loss.

Any person subject to a criminal penalty under this section shall be ordered by a court to make restitution to an insurer or any other person for any financial loss sustained by the insurer or other person caused by the fraudulent act.

(e) In lieu of the criminal penalties set forth in subsection (d), any person who violates [this section] subsections (a) and (b) may be subject to the administrative penalties of restitution of benefits or payments fraudulently received under this chapter, whether received from an employer, insurer, or the special compensation

fund, to be made to the source from which the compensation was received, and one or more of the following:

- (1) A fine of not more than \$10,000 for each violation;
- (2) Suspension or termination of benefits in whole or in part;
- (3) Suspension or disqualification from providing medical care or services, vocational rehabilitation services, and all other services rendered for payment under this chapter;
- (4) Suspension or termination of payments for medical, vocational rehabilitation and all other services rendered under this chapter;
- (5) Recoupment by the insurer of all payments made for medical care, medical services, vocational rehabilitation services, and all other services rendered for payment under this chapter; or
- (6) Reimbursement of attorney's fees and costs of the party or parties defrauded.

(f) With respect to the administrative penalties set forth in subsection (e), no penalty shall be imposed except upon consideration of a written complaint that specifically alleges a violation of this section occurring within two years of the date of said complaint. A copy of the complaint specifying the alleged violation shall be served promptly upon the person charged. The director or board shall issue, where a penalty is ordered, a written decision stating all findings following a hearing held not fewer than twenty days after written notice to the person charged. Any person aggrieved by the decision may appeal the decision under sections 386-87 and 386-88."

SECTION 6. Chapter 386, Hawaii Revised Statutes, is amended by amending the title of part V, subpart C to read as follows:

**"C. PUBLIC BOARD MEMBERS, RESERVE POLICE OFFICERS,  
POLICE CHAPLAINS, VOLUNTEER FIREFIGHTERS, VOLUNTEER  
BOATING ENFORCEMENT OFFICERS, AND VOLUNTEER  
CONSERVATION AND RESOURCES ENFORCEMENT OFFICERS"**

SECTION 7. Section 386-181, Hawaii Revised Statutes, is amended to read as follows:

**"§386-181 Generally.** (a) As used in this section[, "public]:

"Police chaplain" means a member of an authorized chaplaincy program of a county police department who performs services in a voluntary and unpaid capacity under the authorized direction of an officer of the department.

"Public board" means a governmental body, regardless of its designation, duly created under authority vested by law for the purposes of performing quasi-judicial, administrative, or advisory functions[; "reserve].

"Reserve police officer" means a member of an authorized reserve force of a county police department who performs services in a voluntary and unpaid capacity under the authorized direction of an officer of the department[; "volunteer firefighter" means a person who performs services for a county fire department in a voluntary and unpaid capacity under the authorized direction of an officer of the department; "volunteer boating enforcement officer" means a member of the authorized volunteer enforcement force of the harbors division, department of transportation, who performs services in a voluntary and unpaid capacity under the authorized direction of an officer of the department; and "volunteer conservation and resources enforcement officer" means a member of the authorized volunteer enforcement force of the division of conservation and resources enforcement, department of land and natural resources, State of Hawaii, who performs services in a

voluntary and unpaid capacity under the authorized direction of an officer of the department].

“Volunteer boating enforcement officer” means a member of the authorized volunteer enforcement force of the harbors division, department of transportation, who performs services in a voluntary and unpaid capacity under the authorized direction of an officer of the department.

“Volunteer conservation and resources enforcement officer” means a member of the authorized volunteer enforcement force of the division of conservation and resources enforcement, department of land and natural resources, who performs services in a voluntary and unpaid capacity under the authorized direction of an officer of the department.

“Volunteer firefighter” means a person who performs services for a county fire department in a voluntary and unpaid capacity under the authorized direction of an officer of the department.

(b) [Benefits of injured board members, reserve police officers, volunteer firefighters, volunteer boating enforcement officers, and volunteer conservation and resources enforcement officers.] If a member of a public board, a reserve police officer, a police chaplain, a volunteer firefighter, a volunteer boating enforcement officer, or a volunteer conservation and resources enforcement officer is injured while performing services for the board, county police department, county fire department, harbors division of the department of transportation, or division of conservation and resources enforcement of the department of land and natural resources, under the conditions specified in section 386-3, the person or the person’s dependents shall be entitled to all compensation in the manner provided by this chapter and, for the purposes of this chapter, the person shall, in every case, be deemed to have earned wages for the services.

(c) [Computation of average weekly wages.] In computing the average weekly wages of an injured public board member, reserve police officer, police chaplain, volunteer firefighter, volunteer boating enforcement officer, or volunteer conservation and resources enforcement officer:

- (1) The person’s income from self-employment shall be considered wages;
- (2) The person shall, in no event, be considered to have earned less than the minimum hourly wage prescribed in chapter 387;
- (3) Wages of other employees in comparable employment shall not be considered;
- (4) Section 386-51(5) shall not apply; and
- (5) All provisions of section 386-51 not inconsistent [herewith] with this section shall apply.”

SECTION 8. Rate reduction; insurers. The insurance commissioner shall effect a moratorium and not approve any rate level increase in workers’ compensation insurance during the period July 1, 1996, to January 31, 1997.

- (1) Commencing February 1, 1997, all authorized insurers transacting workers’ compensation insurance in the voluntary market in this State shall identify overall cost savings resulting from the implementation of Act 234, Session Laws of Hawaii 1995, and shall apply the cost savings as a rate reduction of the rates for all policies containing workers’ compensation coverage, in effect on January 31, 1997, for each new and renewal policy and provide that the new rates shall be in effect and filed during the period February 1, 1997, to January 31, 1998. The cost savings identified shall have been applied equitably to all policyholders. There shall be no exception to the requirements of this paragraph, unless the commissioner, pursuant to an insurer’s petition, shall find that the use of the rates required herein by an insurer will be

- inadequate to the extent that the rates jeopardize the solvency of the insurer required to use such rates. If the Hawaii employers' mutual insurance company begins issuing policies during this time period, the company shall identify overall cost savings in its rate filings resulting from the implementation of Act 234, Session Laws of Hawaii 1995, and this Act, and shall apply such cost savings to all workers' compensation policies issued and annually renewed through January 31, 1998.
- (2) Commencing February 1, 1998, all authorized insurers transacting workers' compensation insurance in the voluntary market in this State shall identify overall cost savings resulting from the implementation of Act 234, Session Laws of Hawaii 1995, and this Act, and shall apply the cost savings as a rate reduction of the rates for all policies containing workers' compensation coverage, in effect of January 31, 1998, for each new and renewal policy and provide that the new rates shall be in effect and filed during the period February 1, 1998, to January 31, 1999. If the Hawaii employers' mutual insurance company is in existence or begins issuing policies during this time period, the company shall identify overall cost savings in its rate filings resulting from the implementation of Act 234, Session Laws of Hawaii 1995, and this Act, and shall apply such cost savings to all workers' compensation policies issued and annually renewed through January 31, 1999.
  - (3) Commencing February 1, 1999, all authorized insurers transacting workers' compensation insurance in the voluntary market in this State shall identify overall cost savings resulting from the implementation of Act 234, Session Laws of Hawaii 1995, and this Act, and shall apply the cost savings as a rate reduction of the rates for all policies containing workers' compensation coverage, in effect on January 31, 1999, for each new and renewal policy and provide that the new rates shall be in effect and filed during the period February 1, 1999, to January 31, 2000. If the Hawaii employers' mutual insurance company is in existence or begins issuing policies during this time period, the company shall identify overall cost savings in its rate filings resulting from the implementation of Act 234, Session Laws of Hawaii 1995, and this Act, and shall apply such cost savings to all workers' compensation policies issued and annually renewed through January 31, 2000.
  - (4) As used in this section, "this Act" means House Bill No. 3968,<sup>1</sup> Regular Session of 1996, if enacted in any form.

**SECTION 9. Rate reduction; assigned risk pool.**

- (1) Commencing November 1, 1996, the workers compensation residual market established pursuant to section 431:14-116.6, Hawaii Revised Statutes, shall identify overall cost saving resulting from the implementation of Act 234, Session Laws of Hawaii 1995, and shall apply the cost savings as a rate reduction of the rates for all policies containing workers' compensation coverage, in effect on October 31, 1996, for each new and renewal policy and provide that the new rates shall be in effect and filed during the period from November 1, 1996, to October 31, 1997. The cost savings identified shall have been applied equitably to all policyholders.
- (2) Commencing November 1, 1997, the workers' compensation residual market established pursuant to section 431:14-116.6, Hawaii Revised Statutes, shall identify overall cost savings resulting from the implementation of Act 234, Session Laws of Hawaii 1995, and this Act, and shall apply the cost savings as a rate reduction of the rates for all

- policies containing workers' compensation coverage, in effect on October 31, 1997, for each new and renewal policy and provide that the new rates shall be in effect and filed during the period from November 1, 1997, to October 31, 1998.
- (3) Commencing November 1, 1998, the workers' compensation residual market established pursuant to section 431:14-116.6, Hawaii Revised Statutes, shall identify overall cost savings resulting from the implementation of Act 234, Session Laws of Hawaii 1995, and this Act, and shall apply the cost savings as a rate reduction of the rates for all policies containing workers' compensation coverage, in effect on October 31, 1998, for each new and renewal policy and provide that the new rates shall be in effect and filed during the period from November 1, 1998, to October 31, 1999.
  - (4) As used in this section, "this Act" means House Bill No. 3968,<sup>1</sup> Regular Session of 1996, if enacted in any form.

**SECTION 10. Rate reduction; rating or advisory organization.**

- (1) Commencing November 1, 1996, any workers' compensation rating or advisory organization shall identify overall cost savings resulting from the implementation of Act 234, Session Laws of Hawaii 1995, and shall apply such cost savings to a prospective loss cost which shall be in effect and filed during the period from November 1, 1996, to October 31, 1997. The cost savings identified shall have been applied equitably to all policyholders.
- (2) Commencing November 1, 1997, any workers' compensation rating or advisory organization shall identify overall cost savings resulting from the implementation of Act 234, Session Laws of Hawaii 1995, and this Act, and shall apply the cost savings to a prospective loss cost which shall be in effect and filed during the period from November 1, 1997, to October 31, 1998.
- (3) Commencing November 1, 1998, any workers' compensation rating or advisory organization shall identify overall cost savings resulting from the implementation of Act 234, Session Laws of Hawaii 1995, and this Act, and shall apply the cost savings to a prospective loss cost which shall be in effect and filed during the period from November 1, 1998, to October 31, 1999.
- (4) As used in this section, "this Act" means House Bill No. 3968,<sup>1</sup> Regular Session of 1996, if enacted in any form.

**SECTION 11. Relief.** (a) Except as otherwise provided in this Act, all rates or loss costs for workers' compensation insurance shall comply with the provisions contained in chapter 431, Hawaii Revised Statutes. Any insurer or rating organization that contends that the rate provided for in this Act is inadequate shall state in its filing the rate it contends is appropriate and shall state with specificity the factors or data that it contends should be considered to produce the appropriate rate. The insurer shall be permitted to use all of the generally accepted actuarial techniques in making any filing pursuant to this subsection. It shall be the insurer's or rating organization's burden to actuarially justify any rate increase from the reduced rates provided for in this Act. The insurer or rating organization shall include in the filing the expected impact of Act 234, Session Laws of Hawaii 1995, and this Act, where appropriate, on losses, expenses, and rates.

(b) In making this filing, as provided for by this subsection, the insurer or a rating organization shall comply with the following provisions:



- (1) Any rate filing contending that the rates established in this Act are inadequate shall be filed not later than sixty days prior to the appropriate filing date specified; and
- (2) The insurance commissioner shall review and approve or disapprove the rate filing not later than thirty days prior to the appropriate filing date specified with respect to filings submitted pursuant to this Act.

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

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

(e) If a filing is disapproved, in whole or in part, a petition and demand for a contested case hearing may be filed in accordance with chapter 91, Hawaii Revised Statutes. The insurer or rating organization shall have the burden of proving that the disapproval is not justified. While the action of the commissioner in disapproving the rate filing is being challenged, the aggrieved insurer or rating organization shall be entitled to the rates currently established or the filed rates, whichever is lower.

(f) With respect to any approval or disapproval by the insurance commissioner regarding any rate filing focusing upon a reduction, the aggrieved insurer or rating organization shall be entitled to charge the current filed rates while the action of the insurance commissioner is being challenged and contested.

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

SECTION 12. There is appropriated out of the special compensation fund the sum of \$150,000 or so much thereof as may be necessary for fiscal year 1996-1997 to establish the workers' compensation benefits facilitator unit.

The sum appropriated shall be expended by the department of budget and finance for the purposes of this Act.

SECTION 13. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

SECTION 14. This Act shall take effect upon its approval; except that section 12 shall take effect on July 1, 1996.

(Approved June 19, 1996.)<sup>3</sup>

#### Notes

1. Act 261.

2. Edited pursuant to HRS §23G-16.5.

3. This Act was approved on June 19, 1996, which is after the approval date (June 18, 1996) of Acts 266 through 286 and Act 288.