

ACT 97

H.B. NO. 152

A Bill for an Act Relating to Workers' Compensation Medical Fee Schedules.

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

SECTION 1. Finding and purpose. The legislature finds that a process currently exists under section 386-21(c), Hawaii Revised Statutes, for the administrative adjustment of the workers' compensation medical fee schedule by the director of labor and industrial relations.

The purpose of this Act is to:

- (1) Require the auditor to assist the director of labor and industrial relations in the exercise of administrative authority by:
 - (A) Identifying:
 - (i) The medical or health care services or procedures for which fee adjustments are necessary to ensure that injured employees have better access to treatment; and
 - (ii) A methodology for conducting the statistically valid surveys of prevailing charges that are necessary for adjustment of the fees; and
 - (B) Recommending adjusted fees to the director after applying the methodology;
- (2) Make available to the director a limited opportunity to expedite the adjustment of fees identified by the auditor; and
- (3) Require the auditor to recommend to the director and legislature a formalized process for the mandatory periodic review of the adequacy of the medical fee schedule.

SECTION 2. Identification of fees for services or procedures that impede obtaining treatment. (a) After consulting with the director of labor and industrial relations and representatives of relevant entities, the auditor shall identify the medical or health care services or procedures for which the fees:

- (1) Are a significant impediment to injured employees obtaining treatment from providers of those services or procedures; and
- (2) Require adjustment to ensure that injured employees are able to obtain adequate access to treatment from those providers.

The auditor shall list the services or procedures by priority, with higher priority being assigned to those services or procedures that are most difficult for injured employees to obtain treatment.

(b) After the required consultation with the director of labor and industrial relations and representatives of relevant entities, the auditor shall have the exclusive discretion to identify the services or procedures pursuant to subsection (a).

SECTION 3. Establishment of methodology for prevailing charges survey.

(a) After identification of the medical or health care services and procedures for which fee adjustments are found to be necessary pursuant to section 2, and upon further consultation with the director of labor and industrial relations and representatives of relevant entities, the auditor shall establish a methodology for the statistically valid survey of prevailing charges necessary for the adjustment of those fees in accordance with section 386-21(c), Hawaii Revised Statutes.

(b) After the required consultation with the director of labor and industrial relations and representatives of relevant entities, the auditor shall have the exclusive discretion to establish the methodology under subsection (a).

SECTION 4. Use of methodology for recommendation of fee adjustments. (a) After establishing the survey methodology, the auditor shall conduct the survey of prevailing charges for the services and procedures for which fee adjustments are found to be necessary and shall recommend the appropriate fee adjustment based upon the survey results. The recommendation shall be made in accordance with the requirements of section 386-21(c), Hawaii Revised Statutes.

If the auditor does not have sufficient resources to review all fees identified by the auditor as requiring adjustment, the auditor shall conduct the survey for, and recommend the adjustment of, the fees for procedures or services of higher priority until resources are exhausted.

(b) The auditor shall transmit the recommendations to the director of labor and industrial relations no later than June 1, 2014.

SECTION 5. Administrative adjustment of fees; expedited process. (a) From June 1, 2014, the director of labor and industrial relations may take action in accordance with section 386-21(c), Hawaii Revised Statutes, to adjust the fees for medical or health services or procedures identified by the auditor as requiring adjustment; provided that the director may use the results of the survey by the auditor to make an adjustment of a fee and, for that adjustment, shall not be required to conduct the director's own survey of prevailing charges. The director shall have the discretion to adjust the fee to the amount recommended by the auditor or another amount deemed necessary by the director.

If the director does not have sufficient resources to adjust all fees for services or procedures identified by the auditor, the director shall adjust the fees for procedures or services of higher priority, as identified by the auditor, until resources are exhausted.

(b) Until January 1, 2015, the director may adjust the fees identified by the auditor as requiring adjustment without necessity of complying with the rule adoption procedures under chapter 91, Hawaii Revised Statutes; provided that, if the director uses this authority, the director shall hold at least one public hearing, with at least six days of public notice, in each county before final approval of any adjustment.

(c) If the director does not adjust a fee for a service or procedure pursuant to subsection (b) by January 1, 2015, the authority under that subsection shall not be available to the director after that date.

(d) The authority of subsection (b) shall not apply to the adjustment of any fee that has not been identified by the auditor pursuant to section 2 as requiring adjustment.

(e) Nothing in this Act shall require the director of labor and industrial relations to adjust the fee for every service or procedure identified by the auditor. The director shall have the discretion to reject the adjustment of any fee.

SECTION 6. Consultation with representatives of relevant entities. In order to fulfill the requirements of this Act to consult with representatives of relevant entities, the auditor shall have the exclusive discretion to identify the entities and their representatives who shall be consulted. The auditor may consult with the representatives of those entities in private or at a public informational meeting.

No person or entity, except the director of labor and industrial relations, shall have a right to be consulted by the auditor or be aggrieved by the lack of consultation.

No person or entity shall have a cause of action to invalidate the auditor's identification of services or procedures for which fee adjustment is necessary, or the establishment of the survey methodology; provided that the director of

labor of industrial relations shall have such a cause of action if the auditor fails to consult with the director.

SECTION 7. Recommendation of process for mandatory periodic review of medical fee schedule. In addition to the requirements under sections 2, 3, and 4, the auditor shall recommend a formalized process for the mandatory periodic review by the director of labor and industrial relations of the medical fee schedule or certain fees in the schedule. The purpose of the process shall be to ensure the periodic assessment of the sufficiency of the fees for injured employees to obtain treatment.

The auditor shall submit the recommendation for mandatory periodic review of the adequacy of the medical fee schedule to the legislature and director of labor and industrial relations by January 1, 2014.

SECTION 8. There is appropriated out of the general revenues of the State of Hawaii the sum of \$150,000 or so much thereof as may be necessary for fiscal year 2013-2014 for the auditor to:

- (1) Assist the director of labor and industrial relations in adjusting the workers' compensation medical fee schedule for services or procedures for which the fees are identified as requiring adjustment;
- (2) Make available to the director of labor and industrial relations a limited opportunity to expedite the adjustment of fees identified by the auditor; and
- (3) Recommend a formalized process for the mandatory periodic review of the adequacy of the medical fee schedule.

The sum appropriated shall be expended by the auditor for the purposes of this Act.

SECTION 9. This Act shall take effect on July 1, 2013.

(Approved June 14, 2013.)