



GOV. MSG. NO. 1054

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 10, 2007

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith HB855 HD1 SD1 CD1, without my approval, and with the statement of objections relating to the measure.

HB855 HD1 SD1 CD1

A BILL FOR AN ACT RELATING TO WORKERS'
COMPENSATION.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

P R O C L A M A T I O N

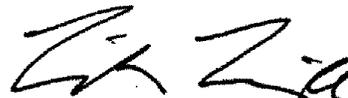
WHEREAS, under Section 16 of Article III of the Constitution of the State of Hawaii, the Governor is required to give notice, by a proclamation, of the Governor's plan to return with the Governor's objections any bill presented to the Governor less than ten days before adjournment sine die or presented to the Governor after adjournment sine die of the Legislature; and

WHEREAS, House Bill No. 855, entitled "A Bill for an Act Relating to Workers' Compensation," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, House Bill No. 855 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return House Bill No. 855 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu,
State of Hawaii, this 25th
day of June, 2007.



LINDA LINGLE
Governor of Hawaii

EXECUTIVE CHAMBERS

HONOLULU

July 10, 2007

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 855

Honorable Members
Twenty-Fourth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 855, entitled "A Bill for an Act Relating to Workers' Compensation."

This bill would allow an injured employee to continue to receive medical services when a dispute exists between the injured employee and the employer or employer's insurer regarding whether medical care should continue, until the Director of Labor and Industrial Relations renders a final decision on the matter. Furthermore, this bill would further restrict the rulemaking authority of the Director of Labor and Industrial Relations.

This bill is objectionable because it requires an employer or employer's insurer to continue to pay for medical treatments after the employer or employer's insurer considers the continued treatments to be inappropriate, excessive, or for a non-compensable condition, and after an independent medical examiner has concluded that the treatment the employee is ready to return to work. Requiring an insurer to pay for medical services that were determined unwarranted or unnecessary with no substantive right to recovery until the parties are notified of the Director's decision denying such benefits, will likely result in higher workers' compensation premiums since this adds to the workers' compensation risk exposure of all businesses in Hawaii.

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This bill fundamentally changes the balance between employer and employee regarding the method by which medical care can be terminated. It essentially overrides the workers' compensation medical fee schedule and negates the "reasonable and necessary" language in current Hawaii workers' compensation law by requiring an employer or employer's insurer to pay for medical benefits that the Director determines is unreasonable and unnecessary until the parties are notified of the Director's decision, thereby placing in jeopardy the fiscal integrity of the State's workers' compensation system.

The bill additionally restricts the ability to recover inappropriate and unwarranted medical payments by not permitting recapture of these payments prior to the issuance of the Director's decision. This is unfair to those employees who genuinely need their medical treatments by allowing other employees who are fit to return to work to draw down benefits, adversely impacting the workers' compensation fund.

This bill is also objectionable because, by requiring that the Director of Labor and Industrial Relations submit any proposed adoption, amendment, or repeal of workers' compensation rules to the Legislature for approval prior to submission to the Governor, it would limit the Director's ability to promptly respond to the changing needs of the workers' compensation program. It is critical that the Director have the ability to expeditiously make, repeal, and amend rules pertaining to workers' compensation in order to be responsive to the immediate needs of the State. To encumber the Director with the proposed procedure would severely frustrate the Director's and the State's ability to facilitate and promote the efficient execution of the workers' compensation laws.

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Finally, this bill requires that the Director of Labor and Industrial Relations' proposed adoption, amendment, or repeal of workers' compensation rules be submitted to both houses of the Legislature and must be approved in their entirety by concurrent resolution. Having given the Director the authority to create, amend and repeal workers' compensation rules, the Legislature's retaining the power to disapprove the Director's proposed adoption, amendment, or repeal of workers' compensation rules may violate the enactment and presentment provisions of the Hawaii Constitution and the separation of powers doctrine.

For the foregoing reasons, I am returning House Bill No. 855 without my approval.

Respectfully,



LINDA LINGLE
Governor of Hawaii

A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION.

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

1 SECTION 1. The legislature finds that needless disruption
2 of medical care services is a recurring problem in workers'
3 compensation-related cases in the State and a serious impediment
4 to the cost-effective treatment and recovery of injured workers.

5 The legislature also finds that the purpose of section
6 386-21, Hawaii Revised Statutes, is to:

- 7 (1) Ensure that medical care, services, and supplies are
8 furnished to the injured worker promptly and
9 effectively;
- 10 (2) Prevent premature and improper termination of medical
11 care and its attendant financial, medical, and
12 psychological hardships; and
- 13 (3) Assist injured workers in achieving medical recovery
14 as rapidly as possible so that they may return to
15 gainful employment.

16 The purpose of this Act is to:



- 1 (1) Ensure that uninterrupted medical care is provided to
2 an injured worker, even if the injured employee's
3 employer denies further treatment, until the director
4 of labor and industrial relations renders a final
5 decision on the matter;
- 6 (2) Require the director of labor and industrial relations
7 to submit any proposed adoption, amendment, or repeal
8 of administrative rules under Hawaii's workers
9 compensation law to both houses of the legislature
10 prior to their submission to the governor for
11 approval; and
- 12 (3) Require that the submitted rules are deemed
13 disapproved unless the legislature approves the
14 submitted rules, in their entirety, through adoption
15 of a concurrent resolution within three hundred sixty
16 five days of their submission to the legislature.

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

19 "(c) The liability of the employer for medical care,
20 services, and supplies shall be limited to the charges computed
21 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~~] 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. The
8 rates or fees provided for in this section shall be adequate to
9 ensure at all times the standard of services and care intended
10 by this chapter to injured employees.

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



1 reasonable rate that shall be the same for all providers of
2 health care services to be paid for that service or procedure.

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

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

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

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



1 When a dispute exists between an injured employee and the
2 employer or the employer's insurer regarding the proposed
3 treatment plan or whether medical services should be continued,
4 the injured employee shall continue to receive essential medical
5 services prescribed by the treating physician necessary to
6 prevent deterioration of the injured employee's condition or
7 further injury until the director determines that medical
8 services pursuant to the treatment plan shall be discontinued.
9 The director shall make a decision within thirty days of the
10 filing of a dispute and shall notify the employer, the employee,
11 and the provider of the decision. The employer or the
12 employer's insurer may recover from the injured employee's
13 personal health care provider or other appropriate occupation or
14 non-occupational insurer all the sums paid for medical services
15 rendered after the employer, the employee, and the provider
16 receives notification of the director's decision. All
17 treatments rendered and all payments made prior to the date that
18 the employer, the employee, and the provider are notified of the
19 director's decision shall not be recoverable by the insurer.
20 Under no circumstances shall the injured employee be charged for
21 the disallowed services, unless the services were obtained in



1 violation of section 386-98. The attending physician, injured
2 employee, employer, or insurance carrier may request in writing
3 that the director review the denial of the treatment plan or the
4 continuation of medical services."

5 SECTION 3. Section 386-72, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§386-72 Rulemaking powers.** (a) In conformity with and
8 subject to chapter 91[~~7~~]and this section, the director of labor
9 and industrial relations shall make rules, not inconsistent with
10 this chapter, which the director deems necessary for or
11 conducive to its proper application and enforcement[~~7~~ provided
12 ~~that the rules were adopted prior to January 1, 2005. No rules~~
13 ~~adopted or amended on or after January 1, 2005, pertaining to~~
14 ~~any workers' compensation standard or procedure arising under~~
15 ~~this chapter shall have the force and effect of law; provided,~~
16 ~~however, that].~~

17 (b) Beginning June 30, 2007, the director, prior to
18 submitting any proposed adoption, amendment, or repeal of rules
19 under this chapter to the governor for approval, shall first
20 submit those proposed rules to both houses of the legislature
21 for approval. The rules shall be deemed disapproved unless the



1 legislature approves the submitted rules in their entirety by
2 concurrent resolution within three hundred sixty-five days of
3 their submission to the legislature. If the proposed rules are
4 not approved by the legislature as provided in this subsection,
5 then the rules shall not be sent to the governor for final
6 approval.

7 (c) Notwithstanding subsection (b), annual updates in the
8 medical fee schedules specific to the amount paid to medical
9 providers as provided in section 386-21(c) may be made
10 consistent with this chapter[-] and subject solely to the
11 requirements of chapter 91."

12 SECTION 4. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 5. This Act shall take effect on July 1, 2007.

