



GOV. MSG. NO. 899

EXECUTIVE CHAMBERS  
HONOLULU

LINDA LINGLE  
GOVERNOR

July 8, 2008

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 HB2388 HD1 SD2 CD1, without my approval, and with the statement of objections relating to the measure.

HB2388 HD1 SD2 CD1

A BILL FOR AN ACT RELATING TO WORKERS'  
COMPENSATION.

Sincerely,

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

LINDA LINGLE

EXECUTIVE CHAMBERS

HONOLULU

July 8, 2008

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 2388

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. 2388, entitled "A Bill for an Act Relating to Workers' Compensation."

The purpose of this bill is to allow a continuation of medical services for injured employees when a dispute exists between the employee and the employer or employer's insurer regarding a proposed treatment plan or whether medical treatments should be continued. The medical services shall continue until the Director of Labor and Industrial Relations issues a decision on the matter.

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 determines the continued treatments to be inappropriate, excessive, for a non-compensable condition, or when the employee has been determined by an independent physician to be ready to return to work. Requiring an insurer to pay for medical services that the employer or employer's insurer believes are unwarranted or unnecessary with no substantive right to recovery until the Director decides to deny such benefits will likely result in higher workers' compensation premiums for 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. Additionally, the bill places the burden on the employer or the employer's insurer to recover inappropriate and unwarranted medical payments.

Finally, this bill tolerates and encourages abuse of the workers' compensation system by allowing healthy employees, who are fit to return to work, to continue drawing down on benefits. This abuse has a negative impact on the cost of the workers' compensation system and hurts all of Hawaii's workers.

For the foregoing reasons, I am returning House Bill No. 2388 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read "Linda Lingle", written in a cursive style.

LINDA LINGLE  
Governor of Hawaii

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## A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION.

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

1           SECTION 1. Section 386-21, Hawaii Revised Statutes, is  
2 amended by amending subsection (c) to read as follows:  
3           "(c) The liability of the employer for medical care,  
4 services, and supplies shall be limited to the charges computed  
5 as set forth in this section. The director shall make  
6 determinations of the charges and adopt fee schedules based upon  
7 those determinations. Effective January 1, 1997, and for each  
8 succeeding calendar year thereafter, the charges shall not  
9 exceed one hundred ten per cent of fees prescribed in the  
10 Medicare Resource Based Relative Value Scale system applicable  
11 to Hawaii as prepared by the United States Department of Health  
12 and Human Services, except as provided in this subsection. The  
13 rates or fees provided for in this section shall be adequate to  
14 ensure at all times the standard of services and care intended  
15 by this chapter to injured employees.

16           If the director determines that an allowance under the  
17 medicare program is not reasonable, or if a medical treatment,  
18 accommodation, product, or service existing as of June 29, 1995,



1 is not covered under the medicare program, the director, at any  
2 time, may establish an additional fee schedule or schedules not  
3 exceeding the prevalent charge for fees for services actually  
4 received by providers of health care services to cover charges  
5 for that treatment, accommodation, product, or service. If no  
6 prevalent charge for a fee for service has been established for  
7 a given service or procedure, the director shall adopt a  
8 reasonable rate that shall be the same for all providers of  
9 health care services to be paid for that service or procedure.

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

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

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

7           When a dispute exists between an employee and the employer  
8 or the employer's insurer regarding the proposed treatment plan  
9 or whether medical services should be continued, the employee  
10 shall continue to receive essential medical services prescribed  
11 by the treating physician necessary to prevent deterioration of  
12 the employee's condition or further injury until the director  
13 issues a decision on whether the employee's medical treatment  
14 should be continued. The director shall make a decision within  
15 thirty days of the filing of a dispute. If the director  
16 determines that medical services pursuant to the treatment plan  
17 should be or should have been discontinued, the director shall  
18 designate the date after which medical services for that  
19 treatment plan are denied. The employer or the employer's  
20 insurer may recover from the employee's personal health care  
21 provider qualified pursuant to section 386-27, or from any other  
22 appropriate occupational or non-occupational insurer, all the



1 sums paid for medical services rendered after the date  
2 designated by the director. Under no circumstances shall the  
3 employee be charged for the disallowed services, unless the  
4 services were obtained in violation of section 386-98. The  
5 attending physician, employee, employer, or insurance carrier  
6 may request in writing that the director review the denial of  
7 the treatment plan or the continuation of medical services."

8 SECTION 2. This Act does not apply to any dispute resolved  
9 prior to its effective date.

10 SECTION 3. New statutory material is underscored.

11 SECTION 4. This Act shall take effect on July 1, 2008.

