

# H.B. NO. 1386

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## A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION MEDICAL TREATMENT.

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

1           SECTION 1. The purpose of this Act is to ensure that  
2 injured workers have access to prompt, quality medical treatment  
3 by requiring the use of clinically tested, evidence based  
4 treatment guidelines for their treatment and recovery.

5           Further, the utilization of clinically tested, evidence  
6 based treatment guidelines protects injured employees from the  
7 hazardous effects of over-treatment or over-utilization of  
8 medical treatment that only further harm the injured employee  
9 emotionally, physically, and economically.

10           The utilization of the Official Disabilities Guidelines  
11 ("ODG") Treatment in Workers' Comp, 3rd edition, issued by the  
12 Work Loss Data Institute and the treatment guidelines, chapters  
13 1-7, issued by the American College of Occupational and  
14 Environmental Medicine, 2<sup>nd</sup> Edition is meant to act as a starting  
15 point in discussing care most appropriate to the injured  
16 employee.

17           SECTION 2. Section 386-26, Hawaii Revised Statutes, is  
18 amended to read as follows:

1           "§386-26 Guidelines on frequency of treatment and  
2 reasonable utilization of health care and services. (a)  
3 Frequency and extent of treatment shall be in accordance with  
4 the ODG Treatment in Workers' Comp, 3<sup>rd</sup> Edition, issued by the  
5 Work Loss Data Institute. In addition to the ODG Treatment in  
6 Workers' Comp, 3<sup>rd</sup> Edition, this section references Chapters 1-7  
7 of the practice guides issued by the American College of  
8 Occupational and Environmental Medicine, 2<sup>nd</sup> Edition, as an  
9 expression of disability management philosophy that should be an  
10 integral part of practice within the workers' compensation  
11 system, and as an educational tool for health care providers and  
12 other participants practicing in the workers' compensation  
13 system.

14           (b) The treatment guidelines required by this section are  
15 presumed medically necessary and correct, as such, the attending  
16 physician is not required to provide a treatment plan to the  
17 employer and may begin treatment, so long as the diagnosis is  
18 correct and medical treatment conforms to subsection (a).

19 However, the attending physician must inform the employer, on a  
20 form prescribed by the department, a diagnosis of the injury.

21           (c) The presumption in subsection (b) is rebuttable and  
22 may be contested by a preponderance of the scientific medical

1 evidence establishing that a variance from the guidelines is  
2 reasonably required to cure and relieve the employee from the  
3 effects of the injury condition.

4       (d) For all injuries not covered by the ODG Treatment in  
5 Workers' Compensation, 3<sup>rd</sup> Edition, or in cases in which the  
6 attending physician believes that additional treatments beyond  
7 that provided by subsection (a) are necessary or that a  
8 treatment guideline different than that specified in subsection  
9 (a) is necessary, the attending physician shall mail a treatment  
10 plan to the employer at least fourteen calendar days prior to  
11 the start of the additional or differing treatments. The  
12 treatment plan shall detail:

13           (1) The attending physician's explanation for  
14           deviation from the guidelines established under  
15           subsection (a), and that the plan is based upon  
16           evidence-based medical treatment guidelines  
17           generally recognized by the national medical  
18           community and that is scientifically based;

19           (2) That the proposed treatment plan and guidelines  
20           were developed by physicians, with involvement of  
21           actively practicing health care providers and are  
22           peer-reviewed;

- 1           (3) Projected commencement and termination dates of
- 2                   treatment;
- 3           (4) A clear statement as to the impression or
- 4                   diagnosis;
- 5           (5) Number and frequency of treatments;
- 6           (6) Modalities and procedures to be used; and
- 7           (7) An estimated total cost of services.

8           No treatment plan shall be valid that is not based upon  
9 evidence-based medical treatment guidelines generally recognized  
10 by the national medical community and that is scientifically  
11 based. With the exception of emergency medical services, any  
12 provider of services who exceeds the treatment guidelines  
13 without proper authorization shall be denied compensation for  
14 the unauthorized services. Unless agreed by the employee,  
15 disallowed fees shall not be charged to the injured employee.

16           (e) The employer may file an objection to the proposed  
17 treatment plan with documentary evidence supporting the denial  
18 and a copy of the denied treatment plan or treatment guideline  
19 with the director, copying the attending physician and the  
20 injured employee. Both the front page of the denial and the  
21 envelope in which the denial is filed shall be clearly  
22 identified as a "TREATMENT PLAN DENIAL" in capital letters. The

1 employer shall be responsible for payment for treatments  
2 provided under a complete treatment plan until the date the  
3 objection is filed with the director. Furthermore, the  
4 employer's objection letter must explicitly state that if the  
5 attending physician or the injured employee does not agree with  
6 the denial, they may request a review by the director of the  
7 employer's denial within fourteen calendar days after postmark  
8 of the employer's denial, and failure to do so shall be  
9 construed as acceptance of the employer's denial. In denying  
10 medical treatment, the employer must disclose to the attending  
11 physician and employee the medically, evidenced-based criteria  
12 used as the basis of the objection.

13 (f) The attending physician or the injured employee may  
14 request in writing that the director review the employer's  
15 denial of the treatment plan. The request for review shall be  
16 filed with the director, copying the employer, within fourteen  
17 calendar days after postmark of the employer's denial. A copy  
18 of the denied treatment plan shall be submitted with the request  
19 for review. Both the front page of the request for review and  
20 the envelope in which the request is filed shall be clearly  
21 identified as a "REQUEST FOR REVIEW OF TREATMENT PLAN DENIAL" in  
22 capital letters. For cases not under the jurisdiction of the

1 director at the time of the request, the injured employee shall  
2 be responsible to have the case remanded to the director's  
3 jurisdiction. Failure to file a request for review of the  
4 employer's denial with the director within fourteen calendar  
5 days after postmark of the employer's denial shall be deemed  
6 acceptance of the employer's denial.

7 (g) The director shall issue a decision, after a hearing,  
8 either requiring the employer to pay the physician within  
9 thirty-one calendar days in accordance with the medical fee  
10 schedule if the treatments are determined to be based upon  
11 evidence-based medical treatment guidelines generally recognized  
12 by the national medical community and that is scientifically  
13 based. In determining the treatment for the claimant, the  
14 director will give deference to amendments to the ODG Treatment  
15 in Workers' Comp, 3<sup>rd</sup> Edition, provided the amendments are based  
16 on sound scientifically based criteria. Disallowed fees shall  
17 not be charged to the injured employee.

18 (h) For treatments and services by providers of service  
19 other than physicians, treatment shall be in accordance with  
20 subsection (a) of this section.

21 (i) The psychiatric evaluation or psychological testing  
22 with the resultant reports shall be limited to four hours unless

1 the physician submits prior documentation indicating the  
2 necessity for more time and receives pre-authorization from the  
3 employer. Fees shall be calculated on an hourly basis as  
4 allowed under Medicare.

5 (j) Any provider of service who exceeds the treatment  
6 guidelines without proper authorization shall not be compensated  
7 for the unauthorized services.

8 (k) No compensation shall be allowed for preparing  
9 treatment plans and written justification for treatments which  
10 exceed the guidelines.

11 (l) Failure to comply with the requirements in this  
12 section may result in denial of fees.

13 (m) Treatment, prescribed on an in-patient basis in a  
14 licensed acute care hospital where the injured employee's level  
15 of care is medically appropriate for an acute setting as  
16 determined by community standards, are excluded from the  
17 frequency of treatment guidelines specified herein.

18 ~~[The director shall issue guidelines for the frequency of~~  
19 ~~treatment and for reasonable utilization of medical care and~~  
20 ~~services by health care providers that are considered necessary~~  
21 ~~and appropriate under this chapter. The guidelines shall not be~~  
22 ~~considered as an authoritative prescription for health care, nor~~

H.B. NO. 1386

1 ~~shall they preclude any health care provider from drawing upon~~  
2 ~~the health care provider's medical judgment and expertise in~~  
3 ~~determining the most appropriate care.~~

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

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

13 SECTION 3. Notwithstanding the requirements under Act 11,  
14 Special Session Laws of Hawaii 2005, Chapters 12-15-30 through  
15 12-15-34, Hawaii Administrative Rules, are revoked.

16 SECTION 4. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18 SECTION 5. This Act shall take January 1, 2008.

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INTRODUCED BY:

Calvin K. H. King  
BY REQUEST

JAN 22 2007

JUSTIFICATION SHEET

DEPARTMENT: Labor and Industrial Relations

TITLE: A BILL FOR AN ACT RELATING TO WORKERS' COMPENSATION MEDICAL TREATMENT.

PURPOSE: The purpose of the amendment is to require medical providers to treat injured workers in accordance with clinically tested, evidence based treatment guidelines. Specifically, medical providers will be required to utilize the Official Disabilities Guidelines ("ODG") Treatment in Workers' Comp, 3rd edition, issued by the Work Loss Data Institute and the treatment guidelines, chapters 1-7, issued by the American College of Occupational and Environmental Medicine, 2<sup>nd</sup> Edition.

MEANS: Amend section 386-26, Hawaii Revised Statutes.

JUSTIFICATION: The use of clinically tested, evidence based treatment guidelines is an effective tool to ensure that occupational injured or ill workers receive prompt, quality medical care that they are entitled to at a reasonable cost to employers.

Further, the utilization of clinically tested, evidence based treatment guidelines protects injured employees from the hazardous effects of over-treatment or over-utilization of medical treatments that only further harm the injured employee emotionally, physically, and economically.

Impact on the public: None.

Impact on the department and other agencies: None.

GENERAL FUND: None.

OTHER FUNDS: None.

HB 1386

PPBS PROGRAM  
DESIGNATION:

LBR-183.

OTHER AFFECTED  
AGENCIES:

Judiciary, University of Hawaii, Department  
of Education, Department of Human Resources.

EFFECTIVE DATE:

January 1, 2008.