



GOV. MSG. NO. 817

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 14, 2009

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

Dear Madam President and Members of the Senate:

I am transmitting herewith SB695 SD1 HD1 CD1, without my approval, and with the statement of objections relating to the measure.

SB695 SD1 HD1 CD1

A BILL FOR AN ACT
RELATING TO WORKERS' COMPENSATION.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle", with a stylized flourish at the end.

LINDA LINGLE

EXECUTIVE CHAMBERS

HONOLULU

July 14, 2009

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 695

Honorable Members
Twenty-Fifth 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, Senate Bill No. 695, 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 treatment plan. The medical services shall continue until the Director of Labor and Industrial Relations issues a decision on the matter.

As I have stated in the past, this bill is objectionable because it requires an employer or employer's insurer to continue to pay for medical treatments after it has been determined that continued treatments are inappropriate, excessive, or for a non-compensable condition. Requiring an employer to pay for medical services that were determined unwarranted or unnecessary with no substantive right to recovery until the Director decides to deny such benefits will result in higher workers' compensation premiums for all businesses in Hawaii at a time when they can least afford it. In addition, this bill fundamentally upsets the balance between the employer and the employee regarding the method by which medical care can be terminated.

STATEMENT OF OBJECTIONS
SENATE BILL NO. 695
Page 2

This bill is fundamentally unfair to hard-working employees who suffer work-related injuries and are in need of treatment. 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 benefits. This abuse has a negative impact on the workers' compensation system and hurts all of Hawaii's workers.

Given the current state of our economy, I sincerely hope the Legislature will reconsider its previous support for this bill. We simply cannot afford to pass legislation that will increase the cost of doing business during such challenging economic times. If we continue to burden business with mandates and regulation, there will be fewer jobs to be had and all employees will suffer. This bill will further delay our economic recovery and represents poor public policy.

For the foregoing reasons, I am returning Senate Bill No. 695 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

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[7] or if a medical treatment,



1 accommodation, product, or service existing as of June 29, 1995,
2 is not covered under the medicare program, the director, at any
3 time, may establish an additional fee schedule or schedules not
4 exceeding the prevalent charge for fees for services actually
5 received by providers of health care services, to cover charges
6 for that treatment, accommodation, product, or service. If no
7 prevalent charge for a fee for service has been established for
8 a given service or procedure, the director shall adopt a
9 reasonable rate [~~that~~] which shall be the same for all providers
10 of health care services to be paid for that service or
11 procedure.

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

15 (1) Future charges or additions prescribed in the Medicare
16 Resource Based Relative Value Scale [~~system~~]
17 applicable to Hawaii as prepared by the United States
18 Department of Health and Human Services; or

19 (2) A statistically valid survey by the director of
20 prevalent charges for fees for services actually
21 received by providers of health care services or based
22 upon the information provided to the director by the



1 appropriate state agency having access to prevalent
2 charges for medical fee information.

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

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



1 provider qualified pursuant to section 386-27, or from any other
2 appropriate occupational or non-occupational insurer, all the
3 sums paid for medical services rendered after the date
4 designated by the director. Under no circumstances shall the
5 employee be charged for the disallowed services, unless the
6 services were obtained in violation of section 386-98. The
7 attending physician, employee, employer, or insurance carrier
8 may request in writing that the director review the denial of
9 the treatment plan or the continuation of medical services."

10 SECTION 2. This Act does not apply to any dispute resolved
11 prior to the effective date of this Act.

12 SECTION 3. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 4. This Act shall take effect on July 1, 2009.

