

JAN 20 2017

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 injured workers,
2 generally of average adult age and employed, are dissimilar from
3 the medicare population, mostly an elderly group with chronic
4 degenerative conditions. Injured workers need immediate access
5 to physicians and rehabilitative providers for treatment to
6 appropriately return to work as soon as possible. Access to
7 medical and rehabilitative treatment for injured workers is
8 restricted because few providers accept workers' compensation
9 patients due to burdensome documentation and reporting, slow
10 approval and payment processing, and inadequate fee
11 reimbursements. Access to workers' compensation treatment is
12 especially limited on neighbor islands where there is already a
13 shortage of physicians.

14 Section 386-21, Hawaii Revised Statutes, requires the
15 director of labor and industrial relations to determine charges
16 that do not exceed one hundred ten per cent of fees prescribed
17 in the Medicare Resource Based Relative Value Scale applicable



1 to Hawaii and allows the director to establish an additional fee
2 schedule under certain circumstances. The state auditor's 2013
3 "Report on Methodology for the Department of Labor and
4 Industrial Relations' Workers' Compensation Medical Fee
5 Schedule" states that flat medicare fee reimbursement rates
6 since at least 2011 indicate the need for an incentive for
7 doctors. Currently, medicare physician fee reimbursements are
8 about eighty per cent of those paid by private health insurance.
9 These fee reimbursements are projected to drop to forty per cent
10 within twenty years and to twenty-five per cent in seventy-five
11 years. If Congress continues to allow this reimbursement
12 differential, increasingly severe problems with access to
13 physician services are expected.

14 The legislature further finds that the United States
15 Department of Labor Office of Workers' Compensation Programs
16 (OWCP), a nationwide program for federal workers, protects the
17 interests of workers who are injured or become ill on the job,
18 their families, and their employers by making timely,
19 appropriate, and accurate decisions on claims, providing prompt
20 payment of benefits, and helping injured workers return to
21 gainful work as early as is feasible. The OWCP fee schedule



S.B. NO. 413

1 provides the necessary incentive for Hawaii's physicians and
2 rehabilitation providers to treat injured workers and eliminates
3 the need for the department of labor and industrial relations'
4 limited staff and resources to review thousands of fee codes to
5 determine appropriate reimbursement.

6 The purpose of this Act is to ensure that injured workers
7 receive medical treatment through rates and fees that are
8 adequate for standards of services and care intended for injured
9 employees.

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

12 "(c) The liability of the employer for medical care,
13 services, and supplies shall be limited to the charges
14 [~~computed~~] as set forth in this section. [~~The director shall~~
15 ~~make determinations of the charges and adopt fee schedules based~~
16 ~~upon those determinations.~~] Effective January 1, [~~1997,~~] 2018,
17 and for each succeeding calendar year thereafter, the charges
18 shall [~~not exceed one hundred ten per cent of fees prescribed in~~
19 ~~the Medicare Resource Based Relative Value Scale applicable to~~
20 ~~Hawaii as prepared by the United States Department of Health and~~
21 ~~Human Services, except as provided in this subsection.~~]



S.B. NO. 413

1 correspond to codes and fees as established in the United States
2 Department of Labor Office Workers' Compensation Programs fee
3 schedule. The rates or fees provided for in this section shall
4 be adequate to ensure at all times the standard of services and
5 care intended by this chapter to injured employees.

6 If the director determines that an allowance under the
7 ~~[medicare program is not reasonable or if]~~ United States
8 Department of Labor Office Workers' Compensation Programs fee
9 schedule for a medical treatment, accommodation, product, or
10 service existing as of June 29, 1995, is not covered under the
11 ~~[medicare program,]~~ fee schedule, the director, at any time, may
12 establish an additional fee schedule or schedules not
13 ~~[exceeding]~~ below the prevalent charge for fees for services
14 actually received by providers of health care services, to cover
15 charges for that treatment, accommodation, product, or service.
16 ~~[If no prevalent charge for a fee for service has been~~
17 ~~established for a given service or procedure, the director shall~~
18 ~~adopt a reasonable rate which shall be the same for all~~
19 ~~providers of health care services to be paid for that service or~~
20 ~~procedure.]~~



1 The director shall update the schedules required by this
2 section every three years or annually, as required. The updates
3 shall be based upon[+

4 ~~(1) Future] future charges or additions prescribed in the
5 ~~[Medicare Resource Based Relative Value Scale
6 ~~applicable to Hawaii as prepared by the United States
7 ~~Department of Health and Human Services; or~~~~~~~~

8 ~~(2) A statistically valid survey by the director of
9 ~~prevalent charges for fees for services actually
10 ~~received by providers of health care services or based
11 ~~upon the information provided to the director by the
12 ~~appropriate state agency having access to prevalent
13 ~~charges for medical fee information.] Office Workers'
14 ~~Compensation Programs fee schedule as prepared by the
15 ~~United States Department of Labor.~~~~~~~~~~~~~~~~

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 employee and the employer
2 or the employer's insurer regarding the proposed treatment plan
3 or whether medical services should be continued, the employee
4 shall continue to receive essential medical services prescribed
5 by the treating physician necessary to prevent deterioration of
6 the employee's condition or further injury until the director
7 issues a decision on whether the employee's medical treatment
8 should be continued. The director shall make a decision within
9 thirty days of the filing of a dispute. If the director
10 determines that medical services pursuant to the treatment plan
11 should be or should have been discontinued, the director shall
12 designate the date after which medical services for that
13 treatment plan are denied. The employer or the employer's
14 insurer may recover from the employee's personal health care
15 provider qualified pursuant to section 386-27, or from any other
16 appropriate occupational or non-occupational insurer, all the
17 sums paid for medical services rendered after the date
18 designated by the director. Under no circumstances shall the
19 employee be charged for the disallowed services, unless the
20 services were obtained in violation of section 386-98. The
21 attending physician, employee, employer, or insurance carrier



1 may request in writing that the director review the denial of
2 the treatment plan or the continuation of medical services."

3 SECTION 3. The department of labor and industrial
4 relations shall analyze the impact of this Act on workers'
5 compensation claimants' access to appropriate treatment and
6 report its findings and recommendations, including any proposed
7 legislation, to the legislature no later than twenty days prior
8 to the convening of the regular session of 2024.

9 SECTION 4. There is appropriated out of the general
10 revenues of the State of Hawaii the sum of \$ or so
11 much thereof as may be necessary for fiscal year 2017-2018 and
12 the same sum or so much thereof as may be necessary for fiscal
13 year 2018-2019 for analysis of the impact of this Act on
14 workers' compensation claimants' access to appropriate
15 treatment.

16 The sums appropriated shall be expended by the department
17 of labor and industrial relations for the purposes of this Act.

18 SECTION 5. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 6. This Act shall take effect on January 1, 2018,
21 and shall be repealed on December 31, 2024; provided that



S.B. NO. 413

1 section 386-21(c), Hawaii Revised Statutes, shall be reenacted
2 in the form in which it read on the day prior to the effective
3 date of this Act.

4

INTRODUCED BY: ~~SEN. D.C. FINE-CLARK~~

A large, stylized handwritten signature in black ink, appearing to read "Dwayne Deere", is written over the printed name.

S.B. NO. 413

Report Title:

Workers' Compensation; Medical Fee Schedule; Appropriation

Description:

Requires the director of labor and industrial relations to set workers' compensation medical charges that correspond to the United States Department of Labor Office of Workers' Compensation Programs fee schedule instead of the Medicare Resource Based Relative Value Scale applicable to Hawaii. Requires the department of labor and industrial relations to submit a report to the legislature. Makes an appropriation for analysis of the Act's impact on injured worker's access to treatment. Repeals on 12/31/2024.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

