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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 386-79, Hawaii Revised Statutes, is  
2 amended to read as follows:  
3           "~~§386-79 [Medical examination by employer's physician.]~~  
4 Requested mutual examination. [~~(a) After an injury and during~~  
5 ~~the period of disability, the employee, whenever ordered by the~~  
6 ~~director of labor and industrial relations, shall submit to~~  
7 ~~examination, at reasonable times and places, by a duly qualified~~  
8 ~~physician or surgeon designated and paid by the employer. The~~  
9 ~~employee shall have the right to have a physician, surgeon, or~~  
10 ~~chaperone designated and paid by the employee present at the~~  
11 ~~examination, which right, however, shall not be construed to~~  
12 ~~deny to the employer's physician the right to visit the injured~~  
13 ~~employee at all reasonable times and under all reasonable~~  
14 ~~conditions during total disability. The employee shall also~~  
15 ~~have the right to record such examination by a recording device~~  
16 ~~designated and paid for by the employee; provided that the~~  
17 ~~examining physician or surgeon approves of the recording.~~



1 ~~If an employee refuses to submit to, or the employee or the~~  
2 ~~employee's designated chaperone in any way obstructs such~~  
3 ~~examination, the employee's right to claim compensation for the~~  
4 ~~work injury shall be suspended until the refusal or obstruction~~  
5 ~~ceases and no compensation shall be payable for the period~~  
6 ~~during which the refusal or obstruction continues.~~

7 ~~(b) In cases where the employer is dissatisfied with the~~  
8 ~~progress of the case or where major and elective surgery, or~~  
9 ~~either, is contemplated, the employer may appoint a physician or~~  
10 ~~surgeon of the employer's choice who shall examine the injured~~  
11 ~~employee and make a report to the employer. If the employer~~  
12 ~~remains dissatisfied, this report may be forwarded to the~~  
13 ~~director.~~

14 ~~Employer requested examinations under this section shall~~  
15 ~~not exceed more than one per case unless good and valid reasons~~  
16 ~~exist with regard to the medical progress of the employee's~~  
17 ~~treatment. The cost of conducting the ordered medical~~  
18 ~~examination shall be limited to the complex consultation charges~~  
19 ~~governed by the medical fee schedule established pursuant to~~  
20 ~~section 386-21(e).]~~



1        (a) Following an injury and after a claim is filed by the  
2 injured employee, the employer may appoint a qualified physician  
3 mutually agreed upon by the parties and paid for by the  
4 employer, to conduct an independent medical examination or a  
5 permanent impairment rating examination of the injured employee  
6 and make a report to the employer.

7        (b) The cover letter to the physician selected to perform  
8 an examination under this section shall notify the physician  
9 that the physician has been mutually selected by the parties to  
10 conduct an independent examination. The cover letter shall be  
11 transmitted to the injured employee at least five working days  
12 prior to the appointment. Upon the issuance of the report of  
13 the independent medical examination or permanent impairment  
14 rating examination, the employee or employee's representative  
15 shall be promptly provided with a copy thereof.

16        (c) A physician selected pursuant to this section to  
17 perform an independent medical examination or a permanent  
18 impairment rating examination shall be willing to undertake the  
19 examination and be paid by the employer. The selected physician  
20 shall be currently licensed to practice in Hawaii pursuant to  
21 chapter 442, 448, 453, 455, 457, 459, 463E, or 465; except that



1 upon approval by the director, a physician in a specialty area  
2 who resides outside of the State and is licensed in another  
3 state as a physician with requirements equivalent to a  
4 physician's license under chapter 442, 448, 453, 455, 457, 459,  
5 463E, or 465, may be selected if no physician licensed by the  
6 State in that specialty area is available to conduct the  
7 examination.

8 If the employee does not reside in Hawaii, a physician who  
9 is licensed in and who resides in the state of the employee's  
10 residence may be selected if that state's physician licensing  
11 requirements are equivalent to a physician's license under  
12 chapter 442, 448, 453, 455, 457, 459, 463E, or 465.

13 If the parties are unable to mutually agree on the  
14 selection of a physician to conduct the independent medical  
15 examination or permanent impairment rating examination, then the  
16 director shall appoint a duly qualified impartial physician to  
17 examine the injured employee and to prepare a report to the  
18 employer. The fees for such examination shall be paid from the  
19 funds appropriated by the legislature for use by the department.

20 Any physician mutually selected or otherwise appointed to  
21 perform an independent medical examination or permanent



1 impairment rating examination pursuant to this section shall  
2 examine the employee within forty-five days of receiving notice  
3 of the selection or appointment, or otherwise, as soon as  
4 possible.

5 (d) In no event shall an independent medical examination  
6 and a permanent impairment rating examination be combined into a  
7 single medical examination unless the employee consents in  
8 writing to the single examination by the selected physician.

9 In no event shall the director, appellate board, or a  
10 court, order more than one requested independent medical  
11 examination and one permanent impairment rating examination per  
12 case, unless valid reason exists with regard to the medical  
13 progress of the employee's medical treatment or when major  
14 surgery or elective surgery is contemplated. In the event of  
15 multiple examinations, the process of mutually selecting or  
16 otherwise appointing a physician set forth in this section shall  
17 apply.

18 (e) The employee shall have the right to have a physician,  
19 surgeon, or chaperone designated and paid by the employee  
20 present at the examination, which right, however, shall not be  
21 construed to deny to the selected physician the right to visit



1 the injured employee at all reasonable times and under all  
2 reasonable conditions during total disability. The employee  
3 shall also have the right to record such examination by a  
4 recording device designated and paid for by the employee. If an  
5 employee refuses to submit to, or the employee or the employee's  
6 designated chaperone in any way obstructs such examination, the  
7 employee's right to claim compensation for the work injury shall  
8 be suspended until the refusal or obstruction ceases and no  
9 compensation shall be payable for the period during which the  
10 refusal or obstruction continues.

11 The cost of conducting the ordered independent medical  
12 examination or permanent impairment rating examination shall be  
13 limited to the complex consultation charges governed by the  
14 medical fee schedule established pursuant to section 386-21(c).

15 (f) When an employee has attained medical stability as  
16 determined by the employee's attending physician, a physician  
17 may be appointed to conduct a permanent impairment rating  
18 examination. The physician shall be mutually selected by the  
19 parties or otherwise appointed pursuant to this section.

20 For the purposes of this subsection, "medical stability"  
21 means that no further improvement in the injured employee's



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1 work-related condition can reasonably be expected from curative  
 2 health care or the passage of time. Medical stability is also  
 3 deemed to have occurred when the injured employee refuses to  
 4 undergo further diagnostic tests or treatment that the physician  
 5 believes will greatly aid in the employee's recovery."

6 SECTION 2. Act 172, Session Laws of Hawaii 2017, is  
 7 amended by amending section 4 to read as follows:

8 "SECTION 4. This Act shall take effect upon its approval[+  
 9 ~~provided that on June 30, 2019, this Act shall be repealed and~~  
 10 ~~section 386-79, Hawaii Revised Statutes, shall be reenacted in~~  
 11 ~~the form in which it read on the day before the effective date~~  
 12 ~~of this Act]."~~

13 SECTION 3. This Act does not affect rights and duties that  
 14 matured, penalties that were incurred, and proceedings that were  
 15 begun before its effective date.

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 effect on June 29, 2019.

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INTRODUCED BY: \_\_\_\_\_

JAN 17 2019



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**Report Title:**

Workers' Compensation; Medical Examination

**Description:**

Amends requirements for medical examinations in workers' compensation claims by requiring that the examining physician be mutually selected by the employer and employee or appointed by the Director of Labor. Provides for document distribution, cost allocation, and physician qualifications.

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

