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## HOUSE RESOLUTION

REQUESTING THE DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS TO  
CONTINUE TO RECOGNIZE AND ACCEPT THE RIGHT OF A PROVIDER OF  
SERVICE TO ASSIGN THE RIGHT TO PARTICIPATE IN A WORKERS'  
COMPENSATION BILLING DISPUTE TO A BILLING COMPANY.

1           WHEREAS, the Hawaii Territorial Legislature enacted the  
2 State's first workers' compensation law in 1915 to ensure that  
3 employees who were injured or disabled on the job were provided  
4 with medical treatment and fixed monetary awards; and  
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6           WHEREAS, this law was Hawaii's first "no-fault" legislation  
7 in that it mandated there be a presumption that an employee's  
8 injuries were "work-related", while prohibiting an employee from  
9 filing civil actions against the employer for work-related  
10 injuries or illnesses; and  
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12           WHEREAS, under existing law, any employer, including the  
13 state and county governments, employing one or more workers is  
14 required to provide workers' compensation coverage; and  
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16           WHEREAS, the workers' compensation law defines  
17 "compensation" to mean "all benefits accorded by this chapter to  
18 an employee or the employee's dependents on account of a work  
19 injury as defined in this section; it includes medical and  
20 rehabilitation benefits, income and indemnity benefits in cases  
21 of disability or death, and the allowance for funeral and burial  
22 expenses"; and  
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24           WHEREAS, as a business decision, employers frequently  
25 assign their rights to participate in a workers' compensation  
26 billing dispute regarding prescription medication claims  
27 (dispute) to an insurance carrier or other billing review  
28 company; and  
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30           WHEREAS, section 12-15-1, Hawaii Administrative Rules  
31 (HAR), provides that a "provider of service" means any person or



1 entity who is licensed, certified, recognized, or registered  
2 with the Department of Commerce and Consumer Affairs and who  
3 renders medical care, medical services, or medical supplies in  
4 accordance with chapter 386, Hawaii Revised Statutes (HRS); and  
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6 WHEREAS, section 12-15-94(c), HAR, provides that the  
7 provider of service may file a "bill dispute request" to include  
8 a copy of the original bill with the Director of Labor and  
9 Industrial Relations within sixty calendar days after postmark  
10 of the employer's objection, and failure to do so shall be  
11 construed as acceptance of the employer's denial; and  
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13 WHEREAS, section 386-57, HRS, relating to the legal status  
14 of right to compensation and compensation payments, provides  
15 that the right to compensation under chapter 386, HRS, shall:  
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- 17 (1) Not be assignable, and the right to compensation and  
18 compensation payments received shall be exempt from  
19 the reach of creditors; and  
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- 21 (2) Have the same status as a lien or the same priority  
22 for the whole thereof with respect to the assets of  
23 the employer as are accorded by law to any unpaid  
24 wages for labor; and  
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26 WHEREAS, the Director of Labor and Industrial Relations has  
27 held since 2012, when the Director issued multiple decisions on  
28 this issue, and has repeatedly ruled consistently with those  
29 decisions, that section 386-57, HRS, is not applicable to a  
30 valid assignment of a dispute from a provider of service to a  
31 billing company because the section must be read in conjunction  
32 with the applicable definition of "compensation"; accordingly,  
33 section 386-57, HRS, only applies to the employee's or the  
34 employee's dependents' right to compensation, and a billing  
35 company assignee has "standing" to file a bill dispute request;  
36 and  
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38 WHEREAS, since the 2012 decisions on standing were issued,  
39 the Director of Labor and Industrial Relations has recognized  
40 that billing companies are allowed to step into the shoes of a  
41 provider of service with the authority to participate in the  
42 dispute pursuant to section 12-15-94(d), HAR; and



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WHEREAS, the Director of Labor and Industrial Relations has consistently intervened in reimbursement disputes at the request of billing companies and issued multiple decisions without wavering on the issue of standing; and

WHEREAS, the Legislature, in section 386-21.7, HRS, has also recognized the right of a provider of service's assignee to contract directly with an employer or carrier, or any entity acting on behalf of the employer or carrier, with regard to the payment for prescription drugs dispensed to an employee for a work injury; and

WHEREAS, Act 231, Session Laws of Hawaii 2014, which was codified into law as section 386-21.7, HRS, stated, "This Act does not restrict and is not intended to restrict the ability of any physician, hospital, pharmacy, or provider of service other than a physician to dispense, bill for, and receive payment for prescription drugs that are reasonably needed as the nature of the injury requires."; and

WHEREAS, permitting a provider of service's assignee to contract directly with an employer or carrier, or any entity acting on behalf of the employer or carrier, with regard to the payment for prescription drugs dispensed to an employee for a work injury, and denying the assignee standing to participate in the dispute process would produce an absurd and unjust result, and restrict the ability of a provider of service to receive payment for prescription drugs dispensed to an injured employee; and

WHEREAS, opponents of this well-established precedent have recently attempted to undermine the ability of a provider of service to assign their rights to participate in a dispute to a billing company; and

WHEREAS, citing an ambiguous decision by the Director of Labor and Industrial Relations that is currently under appeal, these opponents are using the same arguments that the Director considered and dismissed in the Director's 2012 decisions on standing, including claiming that section 386-57, HRS, prohibits the assignment of the right to participate in a dispute; and



# H.R. NO. 158

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WHEREAS, these opponents are urging employers and carriers to refuse to recognize the right of billing companies to participate in disputes; and

WHEREAS, if these opponents are successful, the outcome will restrict the ability of a provider of service to dispense, bill for, and receive payment for prescription drugs that are reasonably needed as the nature of the injury requires, contrary to the express language of Act 231, Session Laws of Hawaii 2014, and the intent of section 386-21.7, HRS; and

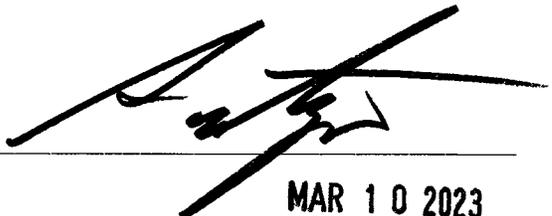
WHEREAS, such a restriction will adversely impact the main goal of the workers' compensation system, which is to heal injured workers and return them to work as soon as reasonably possible; and

WHEREAS, if these opponents are successful, employers and carriers may refuse to pay billings to a legitimate assignee billing company, causing a backlog in billing disputes with the Department of Labor and Industrial Relations; now, therefore,

BE IT RESOLVED by the House of Representatives of the Thirty-second Legislature of the State of Hawaii, Regular Session of 2023, that the Department of Labor and Industrial Relations is requested to continue to recognize and accept the right of a provider of service to assign the right to participate in a workers' compensation billing dispute to a billing company; and

BE IT FURTHER RESOLVED that certified copies of this Resolution be transmitted to the Director of Labor and Industrial Relations and Director of Human Resources Development.

OFFERED BY:

  
MAR 10 2023

