

MAR 10 2023

SENATE CONCURRENT 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

5
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

11
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

15
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

23
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
29



1 WHEREAS, section 12-15-1, Hawaii Administrative Rules
2 (HAR), provides that a "provider of service" means any person or
3 entity who is licensed, certified, recognized, or registered
4 with the Department of Commerce and Consumer Affairs and who
5 renders medical care, medical services, or medical supplies in
6 accordance with chapter 386, Hawaii Revised Statutes (HRS); and
7

8 WHEREAS, section 12-15-94(c), HAR, provides that the
9 provider of service may file a "bill dispute request" to include
10 a copy of the original bill with the Director of Labor and
11 Industrial Relations within sixty calendar days after postmark
12 of the employer's objection, and failure to do so shall be
13 construed as acceptance of the employer's denial; and
14

15 WHEREAS, section 386-57, HRS, relating to the legal status
16 of right to compensation and compensation payments, provides
17 that the right to compensation under chapter 386, HRS, shall:
18

- 19 (1) Not be assignable, and the right to compensation and
20 compensation payments received shall be exempt from
21 the reach of creditors; and
22
- 23 (2) Have the same status as a lien or the same priority
24 for the whole thereof with respect to the assets of
25 the employer as are accorded by law to any unpaid
26 wages for labor; and
27

28 WHEREAS, the Director of Labor and Industrial Relations has
29 held since 2012, when the Director issued multiple decisions on
30 this issue, and has repeatedly ruled consistently with those
31 decisions, that section 386-57, HRS, is not applicable to a
32 valid assignment of a dispute from a provider of service to a
33 billing company because the section must be read in conjunction
34 with the applicable definition of "compensation"; accordingly,
35 section 386-57, HRS, only applies to the employee's or the
36 employee's dependents' right to compensation, and a billing
37 company assignee has "standing" to file a bill dispute request;
38 and
39

40 WHEREAS, since the 2012 decisions on standing were issued,
41 the Director of Labor and Industrial Relations has recognized
42 that billing companies are allowed to step into the shoes of a



1 provider of service with the authority to participate in the
2 dispute pursuant to section 12-15-94(d), HAR; and
3

4 WHEREAS, the Director of Labor and Industrial Relations has
5 consistently intervened in reimbursement disputes at the request
6 of billing companies and issued multiple decisions without
7 wavering on the issue of standing; and
8

9 WHEREAS, the Legislature, in section 386-21.7, HRS, has
10 also recognized the right of a provider of service's assignee to
11 contract directly with an employer or carrier, or any entity
12 acting on behalf of the employer or carrier, with regard to the
13 payment for prescription drugs dispensed to an employee for a
14 work injury; and
15

16 WHEREAS, Act 231, Session Laws of Hawaii 2014, which was
17 codified into law as section 386-21.7, HRS, stated, "This Act
18 does not restrict and is not intended to restrict the ability of
19 any physician, hospital, pharmacy, or provider of service other
20 than a physician to dispense, bill for, and receive payment for
21 prescription drugs that are reasonably needed as the nature of
22 the injury requires."; and
23

24 WHEREAS, permitting a provider of service's assignee to
25 contract directly with an employer or carrier, or any entity
26 acting on behalf of the employer or carrier, with regard to the
27 payment for prescription drugs dispensed to an employee for a
28 work injury, and denying the assignee standing to participate in
29 the dispute process would produce an absurd and unjust result,
30 and restrict the ability of a provider of service to receive
31 payment for prescription drugs dispensed to an injured employee;
32 and
33

34 WHEREAS, opponents of this well-established precedent have
35 recently attempted to undermine the ability of a provider of
36 service to assign their rights to participate in a dispute to a
37 billing company; and
38

39 WHEREAS, citing an ambiguous decision by the Director of
40 Labor and Industrial Relations that is currently under appeal,
41 these opponents are using the same arguments that the Director
42 considered and dismissed in the Director's 2012 decisions on



1 standing, including claiming that section 386-57, HRS, prohibits
2 the assignment of the right to participate in a dispute; and
3

4 WHEREAS, these opponents are urging employers and carriers
5 to refuse to recognize the right of billing companies to
6 participate in disputes; and
7

8 WHEREAS, if these opponents are successful, the outcome
9 will restrict the ability of a provider of service to dispense,
10 bill for, and receive payment for prescription drugs that are
11 reasonably needed as the nature of the injury requires, contrary
12 to the express language of Act 231, Session Laws of Hawaii 2014,
13 and the intent of section 386-21.7, HRS; and
14

15 WHEREAS, such a restriction will adversely impact the main
16 goal of the workers' compensation system, which is to heal
17 injured workers and return them to work as soon as reasonably
18 possible; and
19

20 WHEREAS, if these opponents are successful, employers and
21 carriers may refuse to pay billings to a legitimate assignee
22 billing company, causing a backlog in billing disputes with the
23 Department of Labor and Industrial Relations; now, therefore,
24

25 BE IT RESOLVED by the Senate of the Thirty-second
26 Legislature of the State of Hawaii, Regular Session of 2023, the
27 House of Representatives concurring, that the Department of
28 Labor and Industrial Relations is requested to continue to
29 recognize and accept the right of a provider of service to
30 assign the right to participate in a workers' compensation
31 billing dispute to a billing company; and
32

33 BE IT FURTHER RESOLVED that certified copies of this
34 Concurrent Resolution be transmitted to the Director of Labor
35 and Industrial Relations and Director of Human Resources
36 Development.
37
38
39

OFFERED BY: _____

