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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. The legislature finds that timely approval or  
2 denial of medical treatment plans is essential to the recovery  
3 of injured employees under the State's workers' compensation  
4 system. Existing law provides that a treatment plan will be  
5 deemed accepted if the employer fails to file an objection and  
6 supporting documentary evidence with the director of labor and  
7 industrial relations. However, the governing statute does not  
8 include a timeframe within which employers must respond.  
9 Without a clear written notice of acceptance or denial within a  
10 reasonable timeframe, physicians are often hesitant to begin  
11 treatment, which can delay necessary care for the injured  
12 employee.

13           The legislature further finds that while deadlines for an  
14 employer or insurer to respond to a request are included in  
15 rules concerning treatments such as concurrent medical  
16 treatment, consultations, and surgeries, a timeframe is notably  
17 absent from the rules concerning physicians' general treatment



1 plans. Furthermore, the workers' compensation system would  
2 benefit from clarifying the employer's obligations, including  
3 the implementation and payment of an approved treatment plan  
4 even if a subsequent objection is raised based on new evidence,  
5 and establishing clear penalties for noncompliance.

6 Accordingly, the purpose of this Act is to improve the  
7 State's workers' compensation system and enforce accountability  
8 amongst employers by:

- 9 (1) Requiring employers to approve or deny a treatment  
10 plan in writing within seven days of its receipt;
- 11 (2) Clarifying the process for objecting to accepted  
12 treatment plans;
- 13 (3) Establishing penalties for noncompliance; and
- 14 (4) Authorizing the director of labor and industrial  
15 relations to enforce penalties.

16 SECTION 2. Section 386-21.2, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 "[+]§386-21.2[+] **Treatment plans[-] acceptance or denial**  
19 **by employer; penalty.** (a) A physician may transmit a treatment  
20 plan to an employer by mail or facsimile; provided that the



1 physician shall send the treatment plan to an address or  
2 facsimile number provided by the employer.

3 (b) Beginning January 1, 2021, an employer shall allow a  
4 physician to transmit a treatment plan to an employer by mail,  
5 facsimile, or secure electronic means; provided that the  
6 physician shall send the treatment plan to an address or  
7 facsimile number provided by the employer.

8 (c) A treatment plan shall be deemed received by an  
9 employer when the plan is sent by mail or facsimile with  
10 reasonable evidence showing that the treatment plan was  
11 received.

12 (d) ~~[A treatment plan shall be deemed accepted if an~~  
13 ~~employer fails to]~~ No later than seven days after receipt of a  
14 treatment plan, an employer shall transmit its written approval  
15 or denial of the treatment plan to the physician and injured  
16 employee by mail, facsimile, or secure electronic means;  
17 provided that the employer denying a treatment plan shall file  
18 with the director:

19 (1) An objection to the treatment plan;

20 (2) Any applicable documentary evidence supporting the  
21 denial; and



1           (3) A copy of the denied treatment plan, copying the  
2           physician and the injured employee~~(-)~~,  
3 no later than seven days after receipt of the treatment plan.

4           (e) Approval of a treatment plan by an employer shall  
5 require the employer to pay the health care provider for any  
6 medical care in the treatment plan pursuant to the medical fee  
7 schedule established pursuant to section 386-21(c).

8           (f) The burden of proof shall be on an employer to  
9 demonstrate by a preponderance of medical evidence that a  
10 treatment plan is unreasonable, unnecessary, or inappropriate to  
11 justify the issuance of a denial pursuant to this section.

12 Denial of a treatment plan that is not supported by a medical  
13 opinion or relevant medical records existing at the time of the  
14 denial shall be presumed to be without reasonable grounds.

15           ~~(e)~~ (g) After ~~acceptance~~ approval of the treatment  
16 plan, an employer may file an objection to the plan if new  
17 documentary evidence supporting the ~~denial~~ objection is  
18 received by the employer~~(-)~~; provided that an employer shall not  
19 deny implementation of and payment for any medical care in the  
20 approved treatment plan until a hearing is held before the



1 director and a decision is rendered denying the treatment plan  
2 based on new documentary evidence.

3 (h) Any employer that fails to transmit written approval  
4 or denial of a treatment plan in compliance with the timeline  
5 set forth in subsection (d) shall be subject to a fine of \$250  
6 per day for each separate offense. Each day of each violation  
7 shall constitute a separate offense. The fine shall be  
8 deposited into the special compensation fund established  
9 pursuant to section 386-151.

10 (i) The director shall assess a penalty of not less than  
11 \$1,000 against any employer that the director finds has denied a  
12 treatment plan or failed to pay for any medical care in an  
13 approved treatment plan without reasonable grounds, frivolously,  
14 or primarily for purposes of delay. The penalty shall be paid  
15 to the injured employee. An employer subject to penalty under  
16 this subsection shall be liable for the injured employee's  
17 reasonable attorney's fees and costs incurred in contesting the  
18 denial.

19 (j) The director shall enforce the penalties provided for  
20 in this section. If any employer fails to pay a penalty  
21 assessed by the director under this section within thirty days,



1 the injured employee or the director may enforce the order in  
2 accordance with section 386-92."

3 SECTION 3. If any provision of this Act, or the  
4 application thereof to any person or circumstance, is held  
5 invalid, the invalidity does not affect other provisions or  
6 applications of the Act that can be given effect without the  
7 invalid provision or application, and to this end the provisions  
8 of this Act are severable.

9 SECTION 4. This Act does not affect rights and duties that  
10 matured, penalties that were incurred, and proceedings that were  
11 begun before its effective date.

12 SECTION 5. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14 SECTION 6. This Act shall take effect January 1, 2077.

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**Report Title:**

DLIR; Workers' Compensation; Treatment Plans; Employers;  
Penalties; Special Compensation Fund

**Description:**

Requires an employer to transmit written approval or denial of a treatment plan to the physician who transmitted the plan for approval within seven days of receipt of the plan. Clarifies provisions relating to denying a treatment plan, burden of proof, and objections. Establishes fines and requires the Director of Labor and Industrial Relations to assess penalties. Authorizes the Director to enforce penalties. Effective 1/1/2077. (SD1)

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

