

ACT 166

S.B. NO. 2386

A Bill for an Act Relating to Coordinated Care Organizations.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 386, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . COORDINATED CARE ORGANIZATIONS

§386-A Purpose. (a) A system of coordinated care to provide coverage for the medical and rehabilitative benefits of a policy required under this chapter shall have the following purposes:

- (1) Minimize workplace injuries and promote workplace health and safety, through a cooperative effort among the employer, the employer’s workers’ compensation insurer, the employee, and the coordinated care organization under section 386-K;
- (2) Provide efficient, cost effective, and timely treatment through a coordinated and comprehensive system of quality health care, including the use of case management;
- (3) Provide a high level of quality of care;
- (4) Provide an understandable, accessible, and user friendly system of care, including open and direct communication and cooperation among the employer, the employer’s workers’ compensation insurer, the employee, and the coordinated care organization;
- (5) Provide a range of treatment, including but not limited to office, clinic, laboratory, hospital, rehabilitative, emergency, and other essential care;
- (6) Make available a variety of specialties as may be necessary and several providers within each specialty to afford comprehensive care and a choice of provider to the employee;
- (7) Provide a prompt and appropriate return to work program to assist an injured employee to return to work safely without unnecessary medical delay, and provide the employer and the employer’s workers’ compensation insurer with timely medical information, including work return status, recommended work restrictions, projected date of return to work, and degree of maximum medical improvement;
- (8) Provide a vocational rehabilitation program under section 386-25; and
- (9) Provide a program of internal dispute resolution processes such as mediation to reduce the adversarial nature of workers’ compensation; provided that the administrative and appeals process under this chapter shall be available to the injured employee at all times.

(b) The provisions of subsection (a), except for subsection (a)(1), are guidelines to assist a coordinated care organization registered under section 386-D in forming a system of coordinated care and to assist the employer, the employer’s workers’ compensation insurer, or a collective bargaining unit in selecting a coordinated care organization.

(c) If a conflict arises in any particular case among the listed purposes in subsection (a), then subsection (a)(3) shall prevail.

§386-B Application and authorization. (a) This part shall not apply without the mutual authorization of a collective bargaining unit, if applicable, and the employer.

(b) If there is a mutual authorization under subsection (a), a negotiated agreement under section 386-3.5 may include the use of a registered coordinated care organization to provide coverage for medical and rehabilitative services required under this chapter.

(c) For an employer not subject to collective bargaining, the employer or the employer's workers' compensation insurer or the employer's employer association may contract with a coordinated care organization registered under section 386-D(a) to provide medical and rehabilitative services required under this chapter. For purposes of this subsection, employer associations may contract for medical and rehabilitative services required under this chapter through coordinated care organizations formed under section 386-C. As used in this subsection, "employer associations" means any legal association of individuals, corporations, partnerships, or associations, except labor organizations, formed for purposes other than insurance.

(d) Captive insurers licensed under chapter 431:19 and self-insureds under section 386-121 may contract with a coordinated care organization registered under section 386-D(a) to provide medical and rehabilitative services required under this chapter.

§386-C Who may form. (a) The following groups may form a coordinated care organization for purposes of section 386-B:

- (1) Mutual benefit society certified under chapter 432:1;
- (2) Labor organization, as defined in section 386-8.5(a)(1);
- (3) Health maintenance organization certified under chapter 432D;
- (4) Insurer offering a policy under chapter 431:10A; and
- (5) An association, partnership, or professional corporation of physicians and other health care providers, including hospitals, rehabilitation services, and emergency care providers.

(b) For purposes of section 386-B, an organization listed in subsection (a) shall operate under this chapter through a workers compensation insurer providing benefits under chapter 386.

§386-D Registration. (a) A coordinated care organization qualified under section 386-C shall register with the department. The registration shall be submitted on forms specified by the department and shall include the following information:

- (1) Name, address, and phone number of the organization;
- (2) Identity of members of the organization, including but not limited to, health care providers, clinics, and hospitals or other medical facilities;
- (3) Services provided by the organization; and
- (4) Description of a plan of organization and operation to implement the purposes under section 386-A.

(b) Registration under subsection (a) shall be a prerequisite for providing coverage for medical and rehabilitative services for purposes of section 386-B. The department shall not accept any registration submitted by an organization that does not meet the requirements of section 386-C.

(c) A coordinated care organization shall file one or more plans or agreements as samples with its registration under subsection (a) for purposes of section 386-A(b). Plans or agreements shall not be subject to approval by the department.

(d) Violation of this section shall nullify any agreement or contract under section 386-B.

§386-E Registration fee. (a) The purpose of this section is to provide for a self-sustaining coordinated care organization system. Employers, insurers, health care providers, and other organizations may realize a cost savings from forming a coordinated care organization. Because these savings accrue to their benefit, a filing fee shall be assessed under subsection (b) so that the State is not burdened with added expense.

(b) Each registration filed under section 386-D shall be accompanied by a registration fee of \$10,000.

(c) There is established a coordinated care organization special fund to be administered by the department. Sums received by the department for registration under this section shall be deposited into the fund. The fund shall be used by the department to defray costs and expenses incurred by the department under this part. Unexpended moneys remaining in the special fund upon repeal of this section shall lapse into the general fund.

§386-F Solvency and fee schedules. (a) A registered coordinated care organization may have a negotiated amount paid by the employer, employer's workers' compensation insurer, or a collective bargaining unit, as applicable, for all services provided to all covered employees.

(b) If the negotiated amount under subsection (a) is a fixed sum for comprehensive care for work injuries, the coordinated care organization shall be subject to the solvency requirements, as follows:

- (1) For a health insurer under chapter 431:10A, chapter 431:5 shall apply;
- (2) For a mutual benefit society, chapter 432 shall apply;
- (3) For a health maintenance organization, chapter 432D shall apply; and
- (4) A labor organization under section 386-C(a)(2) or an association under section 386-C(a)(5) shall post bond with the insurance commissioner in an amount which the commissioner deems sufficient.

A coordinated care organization shall not be subject to regulation under the insurance code, if:

- (1) The negotiated amount under subsection (a) is in the form of assessments, dues, or contributions; and
 - (2) The payment to health care providers for rendering health care and service for work injuries is based on fee for each service.
- (c) Fee schedules shall be as provided under section 386-21(c).
- (d) If an employee disenrolls from a coordinated care organization under section 386-H(d), the coordinated care organization under a fixed sum amount under subsection (b) may retain the earned payment up to the end of the month of the disenrollment and need not refund the earned payment.

§386-G Treatment and utilization protocols. (a) A registered coordinated care organization shall be exempt from the requirements under section 386-26; provided that the frequency and extent of treatment shall not be less than required by the nature of the injury and the process of recovery. Treatment and utilization protocols shall be subject to approval by the department if the department finds that the protocols of a particular coordinated care organization warrant an approval procedure to ensure that a high level of quality of care is provided. The director shall have a health care provider advisory committee to advise the department on approval of protocols.

(b) If the employee believes that more treatment is necessary than that provided under subsection (a), the employee and the coordinated care organization shall utilize the procedures under section 386-A(a)(9) to ensure that a high level of quality of care is provided.

(c) An employer's workers' compensation insurer shall not deny approval of treatment if the treatment is within subsection (a).

§386-H Choice of coordinated care organization; choice of provider. (a) An employer may select two or more registered coordinated care organizations for purposes of this part. The employee shall have a choice of selecting one or need not select any.

(b) Prior to the employee's selection of a coordinated care organization under subsection (a), the employer shall provide the employee with information about each coordinated care organization that is being offered to the employee. The information shall include a list of names, addresses, and specialties of the individual health care providers who provide services for the coordinated care organization.

(c) A registered coordinated care organization shall provide to an employee in its program a choice of physicians and specialists. The employee may change a physician or a specialist as provided in section 386-21(b) within a coordinated care organization.

(d) After a definitive diagnosis or three visits, whichever occurs first, within a coordinated care organization for a work injury during the period of enrollment, the employee may change a physician, hospital, or specialist for any reason to one outside of the coordinated care organization in accordance with section 386-21(b) and upon notice to the coordinated care organization, which shall be deemed to be a disenrollment from the coordinated care organization. An employee who disenrolls may enroll in another registered coordinated care organization offered by the employer, or the employee may select any health care provider for treatment for a work injury. Any further change of physicians, hospitals, or specialists for the disenrolled employee shall be in accordance with section 386-21(b).

(e) Nothing in this section shall limit receiving emergency medical treatment for a work injury from any health care provider or medical services provider. Emergency medical treatment shall be paid by the employer's workers' compensation insurer or the self-insured, as applicable.

(f) This section shall not be construed to affect section 386-21(b) with regards to changing a provider.

§386-I Independent medical examination. (a) The employer, the employer's workers' compensation insurer, or the injured worker may request an independent medical examination for good cause. A case manager under section 386-J shall refer the injured worker to an appropriate health care provider for an independent medical examination outside of the coordinated care organization. The independent medical examiner shall examine the injured worker, review the records, and render a medical report.

(b) If the injured worker refuses to accept the health care provider designated by the case manager under subsection (a), the coordinated care organization and the injured worker shall agree upon another health care provider who is appropriately qualified to perform an independent medical examination.

(c) An independent medical examination under this section shall be performed within twenty-one days of the referral under subsection (a).

(d) The employer's workers' compensation insurer or the self-insured, as applicable, shall pay for the examination and report under subsection (a). The cost of the examination or report shall be subject to approval of the director if the cost is contested. The independent medical examination report shall be submitted to the coordinated care organization, the employer, the employer's workers' compensation insurer, and the employee.

§386-J Case management. A registered coordinated care organization shall assign a case manager to each injured employee to facilitate the accomplishment of the purposes under section 386-A. The case manager shall be a registered nurse who holds a national certification as a case manager or a registered nurse who is otherwise professionally qualified to provide case management services as determined by the registered coordinated care organization.

§386-K Workplace health and safety. (a) An employer under section 386-B(b) or (c) shall have a program of workplace health and safety, as follows:

- (1) For each employer with more than ten employees, there shall be a safety committee; and
- (2) For each employer with ten or fewer employees, there shall be a safety committee if:
 - (A) The employer has a lost workday cases incidence rate in the top ten per cent of all rates for employers in the same industry; or
 - (B) The workers' compensation premium classification assigned to the greatest portion of the payroll for the employer has a premium rate in the top twenty-five per cent of premium rates for all classes as approved by the director; provided that the director shall utilize the most recent departmental statistics regarding occupational injuries and illnesses and workers' compensation loss cost rates approved for use in this State.

(b) A safety committee under subsection (a) shall have a membership that has an equal number of employee and employer representatives who are volunteers for membership and who are selected by their respective peers. A safety committee shall have the following duties:

- (1) To have a regular meeting schedule; provided that each meeting shall be recorded in writing by the employer who shall maintain these records for inspection by the director; provided further that the employer shall compensate employee representatives for the time in attending meetings or the time in attending safety committee training, at the regular hourly rate;
- (2) To inspect the workplace for health and safety on a regular basis;
- (3) To investigate each incidence of accident, illness, or death in the workplace; and
- (4) To prescribe guidelines for the training of safety committee members."

SECTION 2. (a) There is established a coordinated care organization review task force that shall be administratively attached to the department of labor and industrial relations.

The task force shall consist of the following ten members:

- (1) Director of labor and industrial relations;
- (2) Insurance commissioner; and
- (3) Eight persons appointed by the director of labor and industrial relations, one to represent each of the following: labor, management, coordinated care organizations, health care providers involved with a coordinated care organization, workers' compensation insurers, nurse case managers, vocational rehabilitation specialists, and the general public.

If a vacancy occurs, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled. The members shall serve without compensation but shall be reimbursed for all necessary expenses.

(b) The task force shall monitor and study the coordinated care organization system established by this Act to:

- (1) Ensure that a sufficient level of quality care is maintained, while giving consideration to balancing the interests of employers and employees;
- (2) Evaluate the effectiveness of each registered coordinated care organization in achieving the purposes set forth under section 386-A, Hawaii Revised Statutes;
- (3) Make recommendations, if any, to strengthen the coordinated care organization system;
- (4) Compare workers' compensation insurance premiums paid by employers before and after utilizing coordinated care organizations; and
- (5) Make a recommendation to the legislature as to whether or not the repeal date of June 30, 2002, for this Act should be extended.

The legislative reference bureau shall assist the task force in gathering information and data for the study.

(c) All registered coordinated care organizations shall cooperate with the task force in the study by providing information to the task force or the legislative reference bureau upon request. The information shall include the number of employees enrolled in the coordinated care organization, number of disenrolled employees, and the reasons for disenrollments.

(d) The task force shall submit a report of its findings and recommendations to the legislature and the governor no later than twenty days prior to the convening of the regular session of 2002.

SECTION 3. The legislative reference bureau shall conduct a study of coordinated care organizations. The study shall be completed and a report made to the legislature no later twenty days prior to the convening of the regular session of 2002. The study shall evaluate:

- (1) The effectiveness of treatment and quality of care provided by coordinated care organizations;
- (2) The accessibility of medical specialist care to injured employees, including considerations of island by island availability of medical specialists who are willing to treat injured employees under chapter 386, Hawaii Revised Statutes;
- (3) The timeliness for injured workers to receive care; and
- (4) The extent of implementation of workplace health and safety programs.

The legislative reference bureau may rely upon the cooperation of the insurance commissioner, private insurers, and coordinated care organizations to obtain information and statistics in addition to any other sources. Private insurers and coordinated care organizations are urged to cooperate with the legislative reference bureau in its study.

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

SECTION 5. In codifying the new sections added by this Act, the revisor of statutes shall substitute the appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 6. This Act shall take effect upon its approval and shall be repealed on June 30, 2002.

(Approved July 14, 1998.)