
A BILL FOR AN ACT

RELATING TO REPACKAGED DRUGS AND COMPOUND MEDICATIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that regulating markups
2 on repackaged prescription drugs and compound medications will
3 help to contain unreasonable increases of prescription drug
4 costs in Hawaii's workers' compensation insurance system as
5 repackagers expand into states, including Hawaii, where
6 repackaged drug and compound medication costs are not currently
7 regulated.

8 The legislature further finds that Hawaii's current
9 reimbursement rate for pharmaceuticals is among the highest in
10 the nation for brand and generic products.

11 The legislature notes that this measure is not intended to
12 deter physicians from dispensing drugs to their patients. The
13 legislature acknowledges that physician dispensing serves an
14 important purpose and assists patients in receiving
15 comprehensive health care from a single provider. The
16 legislature finds that this measure promotes the practice of
17 physician dispensing of prescription medication in an ethical



1 and transparent manner by authorizing reimbursement of a
2 dispensing fee for each prescription dispensed by a physician.

3 The purpose of this Act is to close a loophole in Hawaii's
4 workers' compensation insurance law to restrict markups of
5 repackaged prescription drugs and compound medications to an
6 amount that will help deter inflation of health care costs by
7 preventing prescription medications from becoming an
8 unreasonable cost driver.

9 SECTION 2. Section 386-21, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§386-21 Medical care, services, drugs, and supplies.** (a)
12 Immediately after a work injury is sustained by an employee and
13 so long as reasonably needed, the employer shall furnish to the
14 employee all medical care, services, drugs, and supplies [~~as~~
15 that the nature of the injury requires. [~~The liability~~
16 Liability pursuant to this subsection for [~~the~~] medical care,
17 services, drugs, and supplies shall be subject to [~~the~~] a
18 deductible [~~under~~] pursuant to section 386-100.

19 (b) Whenever medical care is needed, the injured employee
20 may select any physician or surgeon who [~~is practicing~~
21 practices on the island where the injury was incurred to render
22 medical care. If the services of a specialist are indicated,



1 the employee may select any physician or surgeon practicing the
2 relevant specialty in the State. The director may authorize the
3 selection of a specialist practicing outside of the State
4 [~~where~~] when no comparable medical attendance within the State
5 is available. Upon procuring the services of a physician or
6 surgeon, the injured employee shall give proper notice of the
7 employee's selection to the employer within a reasonable time
8 after [~~the~~] beginning [~~of the~~] treatment. If for any reason
9 during the period when medical care is needed, the employee
10 wishes to change to another physician or surgeon, the employee
11 may do so in accordance with rules prescribed by the director.
12 If the employee is unable to select a physician or surgeon and
13 the emergency nature of the injury requires immediate medical
14 attendance, or if the employee does not desire to select a
15 physician or surgeon and so advises the employer, the employer
16 shall select the physician or surgeon [~~—The selection,~~
17 however,]; provided that selection of a physician or surgeon by
18 an employer shall not deprive the employee of the employee's
19 right [~~of~~] to subsequently [~~selecting~~] select a physician or
20 surgeon for continuance of needed medical care.

21 (c) The liability of the employer for medical care,
22 services, drugs, and supplies shall be limited to the charges



1 computed [~~as set forth~~] pursuant to in this section. The
2 director shall make determinations of [~~the~~] allowable charges
3 and shall adopt fee schedules based upon those determinations.
4 Effective January 1, 1997, and for each succeeding calendar year
5 thereafter, [~~the~~] allowable charges shall not exceed one hundred
6 ten per cent of fees prescribed in the Medicare Resource Based
7 Relative Value Scale applicable to Hawaii as prepared by the
8 United States Department of Health and Human Services, except as
9 provided in this subsection. The rates or fees provided for in
10 this section shall be adequate to ensure at all times the
11 standard of services and care intended by this chapter [~~to~~] for
12 injured employees.

13 If the director determines that an allowance under the
14 medicare program is not reasonable or if a medical treatment,
15 accommodation, product, or service existing as of June 29, 1995,
16 is not covered under the medicare program, the director, at any
17 time, may establish an additional fee schedule or schedules not
18 exceeding the prevalent charge for fees for services actually
19 received by providers of health care services, to cover
20 allowable charges for that treatment, accommodation, product, or
21 service. If no prevalent charge for a fee for service has been
22 established for a given service or procedure, the director shall



1 adopt a reasonable rate which shall be the same for all
2 providers of health care services to be paid for that service or
3 procedure.

4 The director shall update the schedules required by this
5 section every three years or annually, as required[.—The
6 updates shall be], based upon:

7 (1) Future charges or additions prescribed in the Medicare
8 Resource Based Relative Value Scale applicable to
9 Hawaii as prepared by the United States Department of
10 Health and Human Services; or

11 (2) A statistically valid survey by the director of
12 prevalent charges for fees for services actually
13 received by providers of health care services or based
14 upon the information provided to the director by the
15 appropriate state agency [~~having~~] with access to
16 prevalent charges for medical fee information.

17 When a dispute exists between an insurer or self-insured
18 employer and a medical services provider regarding the amount of
19 a fee for medical services, the director may resolve the dispute
20 in a summary manner as the director may prescribe; provided that
21 a provider shall not charge more than the provider's private
22 patient charge for the service rendered.



1 When a dispute exists between an employee and [~~the~~] an
2 employer or the employer's insurer regarding the proposed
3 treatment plan or whether medical services should be continued,
4 the employee shall continue to receive essential medical
5 services prescribed by the treating physician necessary to
6 prevent deterioration of the employee's condition or further
7 injury until the director issues a decision on whether the
8 employee's medical treatment should be continued. The director
9 shall make a decision within thirty days of the filing of a
10 dispute. If the director determines that medical services
11 pursuant to the treatment plan should be or should have been
12 discontinued, the director shall designate the date after which
13 medical services for that treatment plan are denied. The
14 employer or the employer's insurer may recover from the
15 employee's personal health care provider qualified pursuant to
16 section 386-27, or from any other appropriate occupational or
17 non-occupational insurer, all the sums paid for medical services
18 rendered after the date designated by the director. Under no
19 circumstances shall the employee be charged for the disallowed
20 services, unless the services were obtained in violation of
21 section 386-98. The attending physician, employee, employer, or
22 insurance carrier may request in writing that the director



1 review the denial of the treatment plan or the continuation of
2 medical services.

3 (d) The reimbursement amounts for drugs, supplies, and
4 materials shall be priced in accordance with the medical fee
5 schedules adopted by the director pursuant to subsection (c) or
6 a lower amount for which the carrier contracts. Payment for
7 prescription drugs shall be made at the average wholesale price
8 as listed in the Red Book: Pharmacy's Fundamental Reference,
9 plus no more than forty per cent of the average wholesale price
10 for drugs sold by a physician, hospital, pharmacy, or provider
11 of service other than a physician; provided that:

12 (1) A physician who directly dispenses prescription
13 medication to a patient on an island with a population
14 of five hundred thousand or more shall be reimbursed a
15 dispensing fee of \$4 per prescription dispensed; and

16 (2) A physician who directly dispenses prescription
17 medication to a patient on an island with a population
18 of less than five hundred thousand shall be reimbursed
19 a dispensing fee of \$7 per prescription dispensed.

20 Repackaged or relabeled drug prices shall not exceed the amount
21 payable had the drug not been repackaged or relabeled.



1 (e) A repackaged or relabeled drug price shall be
2 calculated by multiplying the number of units dispensed by the
3 average wholesale price set by the original manufacturer of the
4 underlying drug, plus no more than forty per cent, and adding an
5 additional ten per cent repackaging premium.

6 (f) Compounded medications shall be reimbursed based on
7 the sum of the fee due for each medication ingredient having an
8 assigned national drug code that is used in the compounded
9 medication. If the national drug code for any ingredient is a
10 code for a repackaged drug, then reimbursement for that
11 ingredient shall be as provided in subsection (e).

12 (g) If information pertaining to the original labeler or
13 manufacturer of the underlying drug product used in repackaged
14 or compounded medications is not provided or is unknown, then
15 reimbursement shall be based on the most reasonable and closely
16 related average wholesale price for the underlying drug product.

17 ~~[-(d)]~~ (h) The director, with input from stakeholders in the
18 workers' compensation system, including but not limited to
19 insurers, health care providers, employers, and employees, shall
20 establish standardized forms for health care providers to use
21 when reporting on and billing for injuries compensable under
22 this chapter. The forms may be in triplicate, or in any other



1 configuration so as to minimize, to the extent practicable, the
2 need for a health care provider to fill out multiple forms
3 describing the same workers' compensation case to the
4 department, the injured employee's employer, and the employer's
5 insurer.

6 ~~[-(e)]~~ (i) If it appears to the director that the injured
7 employee has wilfully refused to accept the services of a
8 competent physician or surgeon selected as provided in this
9 section, or has wilfully obstructed the physician or surgeon, or
10 medical, surgical, or hospital services or supplies, the
11 director may consider ~~[such]~~ the refusal or obstruction on the
12 part of the injured employee to be a waiver in whole or in part
13 of the right to medical care, services, drugs, and supplies, and
14 may suspend the weekly benefit payments, if any, to which the
15 employee is entitled so long as the refusal or obstruction
16 continues.

17 ~~[-(f)]~~ (j) Any funds as are periodically necessary to the
18 department to implement the ~~[foregoing]~~ provisions of this
19 section may be charged to and paid from the special compensation
20 fund provided by section 386-151.

21 ~~[-(g)]~~ (k) In cases where the compensability of ~~[the]~~ a claim
22 is not contested by the employer, the medical services provider



1 shall notify or bill the employer, insurer, or the special
2 compensation fund for services rendered relating to the
3 compensable injury within two years of the date services were
4 rendered. Failure to bill the employer, insurer, or the special
5 compensation fund within the two-year period shall result in the
6 forfeiture of the medical services provider's right to payment.
7 The medical [+]services[+] provider shall not directly charge
8 the injured employee for treatments relating to the compensable
9 injury.

10 (1) Upon receipt from a medical services provider of a bill
11 for services that is properly completed, including all required
12 documentation and certification by the medical services provider
13 that all charges are eligible for reimbursement according to
14 chapter 386 and the rules of the director, an employer, insurer,
15 or the special compensation fund shall reimburse the medical
16 services provider for all allowable charges within sixty days of
17 receipt of the bill."

18 SECTION 3. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 4. This Act shall take effect on July 1, 2112.



Report Title:

Workers' Compensation; Repackaged Drugs and Compound Medications

Description:

Establishes price caps for the Hawaii workers' compensation insurance system for drugs, including repackaged drugs and compound medications; authorizes reimbursement of a dispensing fee to physicians who dispense prescription medications directly to patients; requires an employer, insurer, or the special compensation fund to provide for reimbursement of medical services within 60 days of receiving a bill for those services. Effective July 1, 2112. (SD1)

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

