

JAN 26 2011

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 of 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 costs of
6 repackaged drugs and compound medications are not regulated.

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

10 The purpose of this Act is to close a loophole in Hawaii's
11 workers' compensation insurance law to reasonably restrict
12 markups of repackaged prescription drugs and compound
13 medications to what is currently authorized for retail
14 pharmacies under state law.

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

17 "**§386-21 Medical care, services, drugs, and supplies.** (a)

18 Immediately after a work injury is sustained by an employee and



1 so long as reasonably needed the employer shall furnish to the
2 employee all medical care, services, drugs, and supplies as the
3 nature of the injury requires. The liability for the medical
4 care, services, drugs, and supplies shall be subject to the
5 deductible under section 386-100.

6 (b) Whenever medical care is needed, the injured employee
7 may select any physician or surgeon who is practicing on the
8 island where the injury was incurred to render medical care. If
9 the services of a specialist are indicated, the employee may
10 select any physician or surgeon practicing in the State. The
11 director may authorize the selection of a specialist practicing
12 outside the State where no comparable medical attendance within
13 the State is available. Upon procuring the services of a
14 physician or surgeon, the injured employee shall give proper
15 notice of the employee's selection to the employer within a
16 reasonable time after the beginning of the treatment. If for
17 any reason during the period when medical care is needed, the
18 employee wishes to change to another physician or surgeon, the
19 employee may do so in accordance with rules prescribed by the
20 director. If the employee is unable to select a physician or
21 surgeon and the emergency nature of the injury requires
22 immediate medical attendance, or if the employee does not desire



1 to select a physician or surgeon and so advises the employer,
2 the employer shall select the physician or surgeon. The
3 selection, however, shall not deprive the employee of the
4 employee's right of subsequently selecting a physician or
5 surgeon for continuance of needed medical care.

6 (c) The liability of the employer for medical care,
7 services, drugs, and supplies shall be limited to the charges
8 computed as set forth in this section. The director shall make
9 determinations of the charges and adopt fee schedules based upon
10 those determinations. Effective January 1, 1997, and for each
11 succeeding calendar year thereafter, the charges shall not
12 exceed one hundred ten per cent of fees prescribed in the
13 Medicare Resource Based Relative Value Scale applicable to
14 Hawaii as prepared by the United States Department of Health and
15 Human Services, except as provided in this subsection. The
16 rates or fees provided for in this section shall be adequate to
17 ensure at all times the standard of services and care intended
18 by this chapter to injured employees.

19 If the director determines that an allowance under the
20 medicare program is not reasonable or if a medical treatment,
21 accommodation, product, or service existing as of June 29, 1995,
22 is not covered under the medicare program, the director, at any



1 time, may establish an additional fee schedule or schedules not
2 exceeding the prevalent charge for fees for services actually
3 received by providers of health care services, to cover charges
4 for that treatment, accommodation, product, or service. If no
5 prevalent charge for a fee for service has been established for
6 a given service or procedure, the director shall adopt a
7 reasonable rate which shall be the same for all providers of
8 health care services to be paid for that service or procedure.

9 The director shall update the schedules required by this
10 section every three years or annually, as required. The updates
11 shall be based upon:

- 12 (1) Future charges or additions prescribed in the Medicare
13 Resource Based Relative Value Scale applicable to
14 Hawaii as prepared by the United States Department of
15 Health and Human Services; or
- 16 (2) A statistically valid survey by the director of
17 prevalent charges for fees for services actually
18 received by providers of health care services or based
19 upon the information provided to the director by the
20 appropriate state agency having access to prevalent
21 charges for medical fee information.



1 When a dispute exists between an insurer or self-insured
2 employer and a medical services provider regarding the amount of
3 a fee for medical services, the director may resolve the dispute
4 in a summary manner as the director may prescribe; provided that
5 a provider shall not charge more than the provider's private
6 patient charge for the service rendered.

7 When a dispute exists between an employee and the employer
8 or the employer's insurer regarding the proposed treatment plan
9 or whether medical services should be continued, the employee
10 shall continue to receive essential medical services prescribed
11 by the treating physician necessary to prevent deterioration of
12 the employee's condition or further injury until the director
13 issues a decision on whether the employee's medical treatment
14 should be continued. The director shall make a decision within
15 thirty days of the filing of a dispute. If the director
16 determines that medical services pursuant to the treatment plan
17 should be or should have been discontinued, the director shall
18 designate the date after which medical services for that
19 treatment plan are denied. The employer or the employer's
20 insurer may recover from the employee's personal health care
21 provider qualified pursuant to section 386-27, or from any other
22 appropriate occupational or non-occupational insurer, all the



1 sums paid for medical services rendered after the date
2 designated by the director. Under no circumstances shall the
3 employee be charged for the disallowed services, unless the
4 services were obtained in violation of section 386-98. The
5 attending physician, employee, employer, or insurance carrier
6 may request in writing that the director review the denial of
7 the treatment plan or the continuation of medical services.

8 (d) The reimbursement amounts for drugs, supplies, and
9 materials shall be priced in accordance with the medical fee
10 schedules adopted by the director pursuant to subsection (c);
11 provided that the carrier may contract for a lower amount.
12 Payment for prescription drugs shall be made at the lower of the
13 average wholesale price as listed in the American Druggist Red
14 Book plus forty per cent of the average wholesale price, or an
15 insurer, self insured, or captive insurer's pharmacy benefit
16 network price when sold by a physician, hospital, pharmacy, or
17 provider of service other than a physician. Repackaged or
18 relabeled drug prices shall not exceed the amount payable had
19 the drug not been repackaged or relabeled.

20 (e) Repackaged or relabeled drug price shall be calculated
21 by multiplying the number of units dispensed by the average



1 wholesale price set by the original manufacturer of the
2 underlying drug, plus forty per cent.

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

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

14 [~~(d)~~] (h) The director, with input from stakeholders in
15 the workers' compensation system, including but not limited to
16 insurers, health care providers, employers, and employees, shall
17 establish standardized forms for health care providers to use
18 when reporting on and billing for injuries compensable under
19 this chapter. The forms may be in triplicate, or in any other
20 configuration so as to minimize, to the extent practicable, the
21 need for a health care provider to fill out multiple forms
22 describing the same workers' compensation case to the



1 department, the injured employee's employer, and the employer's
2 insurer.

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

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

18 ~~[(g)]~~ (k) In cases where the compensability of the claim
19 is not contested by the employer, the medical services provider
20 shall notify or bill the employer, insurer, or the special
21 compensation fund for services rendered relating to the
22 compensable injury within two years of the date services were



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

7 SECTION 3. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: _____

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Report Title:

Workers' Compensation; Repackaged Drugs and Compound Medications

Description:

Restricts markups of repackaged prescription drugs and compound medications to what is currently authorized for retail pharmacies under state law.

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

