

---

---

## A BILL FOR AN ACT

RELATING TO DRUG PRICING IN WORKERS' COMPENSATION AND MOTOR  
VEHICLE INSURANCE CLAIMS.

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

1           SECTION 1. The legislature finds that Hawaii's current  
2 reimbursement rates for pharmaceuticals in workers' compensation  
3 and motor vehicle claims are among the highest in the nation for  
4 both brand and generic products. The legislature further finds  
5 that regulating the pricing of prescription medications will  
6 help control the cost of prescription drugs and compound  
7 medications in Hawaii's workers' compensation and motor vehicle  
8 insurance systems.

9           The purpose of this Act is to limit reimbursement of  
10 prescription medications in order to prevent drug prices from  
11 becoming an unreasonable cost driver of health care in workers'  
12 compensation and motor vehicle claims.

13           Motor vehicle personal injury protection charges follow the  
14 workers' compensation medical fee schedule. Therefore, motor  
15 vehicle insurance benefits shall automatically adopt the drug  
16 pricing protections afforded in this Act unless otherwise



1 modified by the insurance commissioner through rulemaking  
2 authority subsequent to the enactment of this Act.

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

5 "**§386-21 Medical care, services, drugs, and supplies.** (a)  
6 Immediately after a work injury is sustained by an employee and  
7 so long as reasonably needed the employer shall furnish to the  
8 employee all medical care, services, drugs, and supplies as the  
9 nature of the injury requires. The liability for the medical  
10 care, services, drugs, and supplies shall be subject to the  
11 deductible under section 386-100.

12 (b) Whenever medical care is needed, the injured employee  
13 may select any physician or surgeon who is practicing on the  
14 island where the injury was incurred to render medical care. If  
15 the services of a specialist are indicated, the employee may  
16 select any physician or surgeon practicing in the State. The  
17 director may authorize the selection of a specialist practicing  
18 outside the State where no comparable medical attendance within  
19 the State is available. Upon procuring the services of a  
20 physician or surgeon, the injured employee shall give proper  
21 notice of the employee's selection to the employer within a  
22 reasonable time after the beginning of the treatment. If for



1 any reason during the period when medical care is needed, the  
2 employee wishes to change to another physician or surgeon, the  
3 employee may do so in accordance with rules prescribed by the  
4 director. If the employee is unable to select a physician or  
5 surgeon and the emergency nature of the injury requires  
6 immediate medical attendance, or if the employee does not desire  
7 to select a physician or surgeon and so advises the employer,  
8 the employer shall select the physician or surgeon. The  
9 selection, however, shall not deprive the employee of the  
10 employee's right of subsequently selecting a physician or  
11 surgeon for continuance of needed medical care.

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



1 ensure at all times the standard of services and care intended  
2 by this chapter to injured employees.

3       If the director determines that an allowance under the  
4 medicare program is not reasonable or if a medical treatment,  
5 accommodation, product, or service existing as of June 29, 1995,  
6 is not covered under the medicare program, the director, at any  
7 time, may establish an additional fee schedule or schedules not  
8 exceeding the prevalent charge for fees for services actually  
9 received by providers of health care services, to cover charges  
10 for that treatment, accommodation, product, or service. If no  
11 prevalent charge for a fee for service has been established for  
12 a given service or procedure, the director shall adopt a  
13 reasonable rate which shall be the same for all providers of  
14 health care services to be paid for that service or procedure.

15       The director shall update the schedules required by this  
16 section every three years or annually, as required. The updates  
17 shall be based upon:

- 18       (1) Future charges or additions prescribed in the Medicare  
19           Resource Based Relative Value Scale applicable to  
20           Hawaii as prepared by the United States Department of  
21           Health and Human Services; or



1           (2) A statistically valid survey by the director of  
2           prevalent charges for fees for services actually  
3           received by providers of health care services or based  
4           upon the information provided to the director by the  
5           appropriate state agency having access to prevalent  
6           charges for medical fee information.

7           When a dispute exists between an insurer or self-insured  
8           employer and a medical services provider regarding the amount of  
9           a fee for medical services, the director may resolve the dispute  
10          in a summary manner as the director may prescribe; provided that  
11          a provider shall not charge more than the provider's private  
12          patient charge for the service rendered.

13          When a dispute exists between an employee and the employer  
14          or the employer's insurer regarding the proposed treatment plan  
15          or whether medical services should be continued, the employee  
16          shall continue to receive essential medical services prescribed  
17          by the treating physician necessary to prevent deterioration of  
18          the employee's condition or further injury until the director  
19          issues a decision on whether the employee's medical treatment  
20          should be continued. The director shall make a decision within  
21          thirty days of the filing of a dispute. If the director  
22          determines that medical services pursuant to the treatment plan

1 should be or should have been discontinued, the director shall  
2 designate the date after which medical services for that  
3 treatment plan are denied. The employer or the employer's  
4 insurer may recover from the employee's personal health care  
5 provider qualified pursuant to section 386-27, or from any other  
6 appropriate occupational or non-occupational insurer, all the  
7 sums paid for medical services rendered after the date  
8 designated by the director. Under no circumstances shall the  
9 employee be charged for the disallowed services, unless the  
10 services were obtained in violation of section 386-98. The  
11 attending physician, employee, employer, or insurance carrier  
12 may request in writing that the director review the denial of  
13 the treatment plan or the continuation of medical services.

14 (d) Payment for all forms of prescription drugs including  
15 repackaged and relabeled drugs shall not exceed one hundred  
16 forty per cent of the average wholesale price set by the  
17 original manufacturer of the dispensed prescription drug as  
18 identified by its national drug code and as published in the Red  
19 Book: Pharmacy's Fundamental Reference as of the date of  
20 dispensing; provided that any prescription drug which is not  
21 available at a major retail pharmacy within the State shall not  
22 be reimbursable unless specifically approved by the director in



1 accordance with section 91-3. For purposes of this section,  
2 "major retail pharmacy" means a retail pharmacy with five or  
3 more physical locations in the State and ten or more physical  
4 locations in other states.

5 Payment for compounded medications shall not exceed one  
6 hundred forty per cent of the average wholesale price by gram  
7 weight of each underlying prescription drug contained in the  
8 compound medication. For compounded medications, the average  
9 wholesale price shall be that set by the original manufacturer  
10 of the underlying prescription drug as identified by its  
11 national drug code and as published in the Red Book: Pharmacy's  
12 Fundamental Reference as of the date of compounding.

13 If the original manufacturer of the underlying drug product  
14 used in repackaged or relabeled drugs or compounded medications  
15 is not provided or is unknown, then reimbursement shall not  
16 exceed one hundred forty per cent of the average wholesale price  
17 for the original manufacturer's national drug code number as  
18 listed in the Red Book: Pharmacy's Fundamental Reference of the  
19 prescription drug which is most closely related to the  
20 underlying drug product.

21 ~~(d)~~ (e) The director, with input from stakeholders in  
22 the workers' compensation system, including but not limited to



1 insurers, health care providers, employers, and employees, shall  
2 establish standardized forms for health care providers to use  
3 when reporting on and billing for injuries compensable under  
4 this chapter. The forms may be in triplicate, or in any other  
5 configuration so as to minimize, to the extent practicable, the  
6 need for a health care provider to fill out multiple forms  
7 describing the same workers' compensation case to the  
8 department, the injured employee's employer, and the employer's  
9 insurer.

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

20 ~~[(f)]~~ (g) Any funds as are periodically necessary to the  
21 department to implement the foregoing provisions may be charged





1 to and paid from the special compensation fund provided by  
2 section 386-151.

3 ~~[(g)]~~ (h) In cases where the compensability of the claim  
4 is not contested by the employer, the medical services provider  
5 shall notify or bill the employer, insurer, or the special  
6 compensation fund for services rendered relating to the  
7 compensable injury within two years of the date services were  
8 rendered. Failure to bill the employer, insurer, or the special  
9 compensation fund within the two-year period shall result in the  
10 forfeiture of the medical services provider's right to payment.  
11 The medical ~~[+]services[+]~~ provider shall not directly charge  
12 the injured employee for treatments relating to the compensable  
13 injury."

14 SECTION 3. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16 SECTION 4. This Act shall take effect upon its approval.  
17

INTRODUCED BY:

*[Handwritten signatures]*  
Richard Deary  
B. L. Kyri  
[Signature]  
[Signature]

# H.B. NO. 1960

**Report Title:**

Workers' Compensation; Drug Pricing

**Description:**

Establishes price caps for the Hawaii workers' compensation and motor vehicle insurance charges for prescription drugs.

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

