

S.B. NO. 1122

JAN 24 2013

A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION DRUGS.

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 in workers' compensation
10 claims is among the highest in the nation for brand and generic
11 products.

12 The legislature notes that this measure is not intended to
13 deter physicians from dispensing drugs to their patients. The
14 legislature acknowledges that physician dispensing serves an
15 important purpose and assists patients in receiving
16 comprehensive health care from a single provider. The
17 legislature finds that this measure promotes the practice of
18 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.**

12 (a) Immediately after a work injury is sustained by an employee
13 and so long as reasonably needed, the employer shall furnish to
14 the employee all medical care, services, drugs, and supplies
15 ~~[as]~~ that the nature of the injury requires. ~~[The liability]~~
16 Liability pursuant to this section 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 in
2 the State. The director may authorize the selection of a
3 specialist practicing outside of the State [~~where~~] when no
4 comparable medical attendance within the State is available.
5 Upon procuring the services of a physician or surgeon, the
6 injured employee shall give proper notice of the employee's
7 selection to the employer within a reasonable time after [~~the~~]
8 beginning [~~of the~~] treatment. If for any reason during the
9 period when medical care is needed, the employee wishes to
10 change to another physician or surgeon, the employee may do so
11 in accordance with rules prescribed by the director. If the
12 employee is unable to select a physician or surgeon and the
13 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, however,
17 shall not deprive the employee of the employee's right [~~of~~] to
18 subsequently [~~selecting~~] select a physician or surgeon for
19 continuance of needed medical care.

20 (c) The liability of the employer for medical care,
21 services, drugs, and supplies shall be limited to the charges
22 computed [~~as set forth~~] pursuant to this section. The director

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

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

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

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

- 6 (1) Future charges or additions prescribed in the Medicare
7 Resource Based Relative Value Scale applicable to
8 Hawaii as prepared by the United States Department of
9 Health and Human Services; or
- 10 (2) A statistically valid survey by the director of
11 prevalent charges for fees for services actually
12 received by providers of health care services or based
13 upon the information provided to the director by the
14 appropriate state agency [~~having~~] with access to
15 prevalent charges for medical fee information.

16 When a dispute exists between an insurer or self-insured
17 employer and a medical services provider regarding the amount of
18 a fee for medical services, the director may resolve the dispute
19 in a summary manner as the director may prescribe; provided that
20 a provider shall not charge more than the provider's private
21 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 shall be priced in
4 accordance with the medical fee schedules adopted by the
5 director pursuant to subsection (c) or a lower amount for which
6 the carrier contracts. Payment for prescription drugs shall be
7 made at the average wholesale price as listed in the Red Book:
8 Pharmacy's Fundamental Reference, plus no more than forty per
9 cent of the average wholesale price for drugs sold by a
10 physician, hospital, pharmacy, or provider of service other than
11 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 \$ per prescription dispensed;

16 and

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

21 Repackaged or relabeled drug prices shall not exceed the amount
22 as calculated in subsection (e).

1 (e) The price for a repackaged or relabeled drug 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 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, the 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
22 claim is not contested by the employer, the medical services

1 provider shall notify or bill the employer, insurer, or the
2 special 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 SECTION 3. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 4. This Act, upon its approval, shall take effect
13 on July 1, 2013.

14
15 INTRODUCED BY: 

16 BY REQUEST

Report Title:

Workers' Compensation; Drugs

Description:

Establishes price caps for the Hawaii workers' compensation insurance system for drugs. Authorizes reimbursement of a dispensing fee to physicians who dispense prescription medications directly to patients. Effective July 1, 2013.

JUSTIFICATION SHEET

DEPARTMENT: Human Resources Development

TITLE: A BILL FOR AN ACT RELATING TO WORKERS' COMPENSATION DRUGS.

PURPOSE: To establish price caps for the Hawaii workers' compensation insurance system for drugs, including repackaged drugs and compound medications, and authorize reimbursement of a dispensing fee to physicians who dispense prescription medications directly to patients.

MEANS: Amend section 386-21, Hawaii Revised Statutes.

JUSTIFICATION: The State of Hawaii Workers' Compensation Medical Fee Schedule, section 12-15-55(c), Hawaii Administrative Rules, reimbursement rate for pharmaceuticals of up to forty percent (40%) above the average wholesale price, as listed in the American Druggist Red Book, is among the highest in the nation. As a result of the forty percent reimbursement rate and the repackaging and compounding of drugs, workers' compensation employers and insurance carriers have seen exorbitant billings for repackaged or compounded medications that use a different national drug code than that listed in the American Druggist Red Book. Testimony submitted by the Hawaii Insurers Council in the 2011 legislative session detailed prescription drug markups of thirteen percent (13%), to five hundred fifty-eight percent (558%), and up to one thousand six hundred twenty-seven percent (1,627%) over the average wholesale price after the drugs were re-packaged, re-labeled, and distributed by physicians. The same testimony showed compound medications being billed at markups of four hundred thirty-one percent (431%) to one thousand two hundred sixty-three percent (1,263%) above the

average wholesale price. The issue of repackaged and compounded medications, and their increased costs, was discussed at length in Same pill, bigger bill, Honolulu Star-Advertiser, May 20, 2012. Hawaii is not alone in facing this growing national problem. Insurers Pay Big Markups as Doctors Dispense Drugs, New York Times, July 11, 2012.

The State of Hawaii's self-insured workers' compensation program has seen similar markups for prescription drugs in the course of its claims handling, leading to disagreements and billing disputes with repackaging companies as to the proper reimbursement amounts. Restricting markups of repackaged prescription drugs and compound medications will help deter medication costs from becoming an unreasonable cost driver in workers' compensation claims.

To mitigate any concerns over injured workers' access to their medications, this bill authorizes an unspecified dispensing fee to physicians who dispense prescription medications directly to patients.

Impact on the public: None.

Impact on the department and other agencies: Regulated pricing of repackaged and compound medications would reduce costs for medical care, services, and supplies paid out by the Department of Human Resources, Employee Claims Division.

This bill would help to reduce the number of billing disputes that are brought before the Department of Labor and Industrial Relations, Disability Compensation Division.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION:

HRD-102

OTHER AFFECTED
AGENCIES:

Department of Labor and Industrial Relations

EFFECTIVE DATE:

July 1, 2013.