

JAN 24 2013

A BILL FOR AN ACT

RELATING TO MEDICATIONS.

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

1 SECTION 1. The legislature finds that regulating
2 reimbursement for repackaged prescription medication and
3 compounded medication would help to mitigate the financial
4 inconsistency between repackaged and non-repackaged medication
5 and to contain unreasonable increases of prescription medication
6 in Hawaii's workers' compensation insurance system.
7 Additionally, regulating the reimbursement for compounded
8 medication would help to contain compounded medication costs in
9 Hawaii's workers' compensation insurance system, where
10 compounded medications are not presently regulated.

11 The legislature notes that this measure is not intended to
12 deter physicians from dispensing medication to their patients.
13 Physician dispensing serves an important purpose and assists
14 patients in receiving point-of-care comprehensive health care
15 from a single provider.

16 The purpose of this Act is to prevent prescription
17 medications from becoming an unreasonable health care cost
18 driver by promoting the utilization of therapeutically



1 equivalent, lower cost generic prescription medication where
2 medically appropriate and reasonably restricting reimbursement
3 of repackaged prescription medication and compounded medication
4 to amounts comparable to that of retail pharmacies under state
5 law.

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

8 "**§386-21 Medical care, services, and supplies.** (a)

9 Immediately after a work injury is sustained by an employee and
10 so long as reasonably needed, the employer shall furnish to the
11 employee all medical care, services, medication, and supplies as
12 the nature of the injury requires. The liability for the
13 medical care, services, medication, and supplies shall be
14 subject to the deductible under section 386-100.

15 (b) Whenever medical care is needed, the injured employee
16 may select any physician or surgeon who is practicing on the
17 island where the injury was incurred to render medical care. If
18 the services of a specialist are indicated, the employee may
19 select any physician or surgeon practicing in the State. The
20 director may authorize the selection of a specialist practicing
21 outside the State where no comparable medical attendance within
22 the State is available. Upon procuring the services of a



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

15 (c) The liability of the employer for medical care,
16 services, medication, and supplies shall be limited to the
17 charges computed as set forth in this section. The director
18 shall make determinations of the charges and adopt fee schedules
19 based upon those determinations. Effective January 1, 1997, and
20 for each succeeding calendar year thereafter, the charges shall
21 not exceed one hundred ten per cent of fees prescribed in the
22 Medicare Resource Based Relative Value Scale applicable to



1 Hawaii as prepared by the United States Department of Health and
2 Human Services, except as provided in this subsection. The
3 rates or fees provided for in this section shall be adequate to
4 ensure at all times the standard of services and care intended
5 by this chapter to injured employees.

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

18 The director shall update the schedules required by this
19 section every three years or annually, as required. The updates
20 shall be based upon:

21 (1) Future charges or additions prescribed in the Medicare
22 Resource Based Relative Value Scale applicable to



1 Hawaii as prepared by the United States Department of
2 Health and Human Services; or
3 (2) A statistically valid survey by the director of
4 prevalent charges for fees for services actually
5 received by providers of health care services or based
6 upon the information provided to the director by the
7 appropriate state agency having access to prevalent
8 charges for medical fee information.

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

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



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

16 (d) Reimbursement for brand name prescription medication
17 shall be the average wholesale price as listed in the American
18 Druggist Red Book plus forty per cent of the average wholesale
19 price, except where the carrier and the specific provider
20 seeking reimbursement have directly contracted between one
21 another for a lower reimbursement amount. If the medication has
22 been repackaged or relabeled, reimbursement shall be calculated



1 by multiplying the number of units dispensed by the average
2 wholesale price set by the original manufacturer of the
3 underlying medication, plus forty per cent.

4 (e) Reimbursement for generic prescription medication
5 shall be the average wholesale price as listed in the American
6 Druggist Red Book plus sixty per cent of the average wholesale
7 price, except where the carrier and the specific provider
8 seeking reimbursement have directly contracted between one
9 another for a lower reimbursement amount. If the medication has
10 been repackaged or relabeled, reimbursement shall be calculated
11 by multiplying the number of units dispensed by the average
12 wholesale price set by the original manufacturer of the
13 underlying medication, plus sixty per cent.

14 (f) Compounded medications shall be reimbursed based on
15 the sum of the average wholesale prices due for each medication
16 ingredient having an assigned national drug code that is used
17 in the compounded medication, plus forty per cent.

18 (g) If information pertaining to the original labeler or
19 manufacturer of the underlying medication product used in
20 repackaged or compounded medications is not provided or is
21 unknown, then reimbursement shall be based on the most



1 reasonable and closely related average wholesale price for the
2 underlying medication product.

3 [~~d~~] (h) The director, with input from stakeholders in
4 the workers' compensation system, including but not limited to
5 insurers, health care providers, employers, and employees, shall
6 establish standardized forms for health care providers to use
7 when reporting on and billing for injuries compensable under
8 this chapter. The forms may be in triplicate, or in any other
9 configuration so as to minimize, to the extent practicable, the
10 need for a health care provider to fill out multiple forms
11 describing the same workers' compensation case to the
12 department, the injured employee's employer, and the employer's
13 insurer.

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



1 employee is entitled so long as the refusal or obstruction
2 continues.

3 ~~(f)~~ (j) Any funds as are periodically necessary to the
4 department to implement the foregoing provisions may be charged
5 to and paid from the special compensation fund provided by
6 section 386-151.

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

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



1 SECTION 4. This Act shall take effect on July 1, 2013.

2
INTRODUCED BY: *Anna Escobedo Cabral*
BY REQUEST



S.B. NO. 1302

Report Title:

Workers' Compensation; Repackaged Medications and Compounded Medications

Description:

Restricts reimbursement of repackaged prescription drugs and compound medications to amounts comparable to that of 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.

