

JAN 17 2014

S.B. NO. 2365

A BILL FOR AN ACT

RELATING TO INSURANCE CLAIMS.

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

1 SECTION 1. The legislature finds that Hawaii's existing
2 reimbursement rates for pharmaceuticals in workers' compensation
3 claims are among the highest in the nation for both brand and
4 generic products. The legislature further finds that regulating
5 the pricing of prescription medications, similar to legislation
6 recently passed in Florida, will help control the cost of
7 prescription drugs and compound medications in the State's
8 workers' compensation 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 claims.

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

15 "**§386-21 Medical care, services, drugs, and supplies.** (a)
16 Immediately after a work injury is sustained by an employee and
17 so long as reasonably needed, the employer shall furnish to the
18 employee all medical care, services, drugs, and supplies as the



1 nature of the injury requires. The liability for the medical
2 care, services, drugs, and supplies shall be subject to the
3 deductible under section 386-100.

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



1 selection, however, shall not deprive the employee of the
2 employee's right of subsequently selecting a physician or
3 surgeon for continuance of needed medical care.

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

17 If the director determines that an allowance under the
18 medicare program is not reasonable or if a medical treatment,
19 accommodation, product, or service existing as of June 29, 1995,
20 is not covered under the medicare program, the director, at any
21 time, may establish an additional fee schedule or schedules not
22 exceeding the prevalent charge for fees for services actually



1 received by providers of health care services, to cover charges
2 for that treatment, accommodation, product, or service. If no
3 prevalent charge for a fee for service has been established for
4 a given service or procedure, the director shall adopt a
5 reasonable rate which shall be the same for all providers of
6 health care services to be paid for that service or procedure.

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

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

20 When a dispute exists between an insurer or self-insured
21 employer and a medical services provider regarding the amount of
22 a fee for medical services, the director may resolve the dispute



1 in a summary manner as the director may prescribe; provided that
2 a provider shall not charge more than the provider's private
3 patient charge for the service rendered.

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



1 services were obtained in violation of section 386-98. The
2 attending physician, employee, employer, or insurance carrier
3 may request in writing that the director review the denial of
4 the treatment plan or the continuation of medical services.

5 (d) Payment for all forms of prescription drugs including
6 repackaged and relabeled drugs shall not exceed one hundred
7 forty per cent of the average wholesale price set by the
8 original manufacturer of the dispensed prescription drug as
9 identified by its National Drug Code and as published in the Red
10 Book: Pharmacy's Fundamental Reference as of the date of
11 dispensing; provided that any prescription drug that is not
12 available at a major retail pharmacy within the State shall not
13 be reimbursable unless specifically approved by the director
14 through rulemaking in accordance with section 91-3. For
15 purposes of this section, "major retail pharmacy" means a retail
16 pharmacy with five or more physical locations in the State and
17 ten or more physical locations in other states.

18 Payment for compounded medications shall not exceed the sum
19 of one hundred forty percent of the average wholesale price by
20 gram weight of each underlying prescription drug contained in
21 the compounded medication. For compounded medications, the
22 average wholesale price shall be that set by the original



1 manufacturer of the underlying prescription drug as identified
2 by its National Drug Code and as published in the Red Book:
3 Pharmacy's Fundamental Reference as of the date of compounding.

4 All pharmaceutical claims submitted for repackaged or
5 re-labeled prescription medications shall include the National
6 Drug Code of the original manufacturer. If the original
7 manufacturer of the underlying drug product used in repackaged
8 or re-labeled drugs or compounded medications is not provided or
9 is unknown, then reimbursement shall not exceed one hundred
10 forty percent of the average wholesale price for the original
11 manufacturer's National Drug Code number as listed in the Red
12 Book: Pharmacy's Fundamental Reference of the prescription drug
13 that is most closely related to the underlying drug product.

14 [~~d~~] (e) 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)]~~ (f) 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, and supplies, and may suspend
11 the weekly benefit payments, if any, to which the employee is
12 entitled so long as the refusal or obstruction continues.

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

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



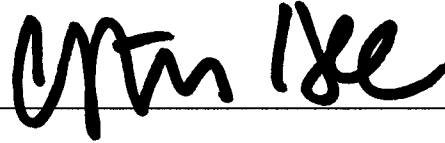
1 compensation fund within the two-year period shall result in the
2 forfeiture of the medical services provider's right to payment.
3 The medical [+]services[+] provider shall not directly charge
4 the injured employee for treatments relating to the compensable
5 injury."

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

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

9

INTRODUCED BY: _____



S.B. NO. 2365

Report Title:

Insurance Claims; Prescription Drugs; Workers' Compensation

Description:

Limits the reimbursement payments of prescription medications, including relabeled or repackaged prescription medications, in workers' compensation claims.

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

