THE SENATE
TWENTY-SEVENTH LEGISLATURE, 2014
STATE OF HAWAII

S.B. NO. 2365 S.D. 1

A BILL FOR AN ACT

RELATING TO INSURANCE CLAIMS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Payment for all forms of prescription drugs including repackaged and relabeled drugs shall be one hundred forty per cent of the average wholesale price set by the original manufacturer of the dispensed prescription drug as identified by its National Drug Code and as published in the Medi-Span Master Drug Database as of the date of purchase by the provider of service, except where the employer or carrier, or any entity acting on behalf of the employer or carrier, directly contracts with the provider or the provider's assignee for a lower amount; provided that the director may limit reimbursement of a specific prescription drug that is not available at a major retail pharmacy within the State. For purposes of this section, "major retail pharmacy" means a retail pharmacy with five or more physical locations in the State and ten or more physical locations in other states.

Notwithstanding any other provision in this subsection to the contrary, reimbursement for over the counter medications dispensed by a licensed practitioner shall be one hundred twenty

per cent of the average wholesale price set by the original manufacturer of the dispensed prescription drug as identified by its National Drug Code and as published in the Medi-Span Master Drug Database as of the date of purchase by the provider of service, except where the employer or carrier, or any entity acting on behalf of the employer or carrier, directly contracts with the provider or the provider's assignee for a lower amount.

Payment for compounded medications shall be the sum of one hundred forty percent of the average wholesale price by gram weight of each underlying prescription drug contained in the compounded medication. For compounded medications, the average wholesale price shall be that set by the original manufacturer of the underlying prescription drug as identified by its National Drug Code and as published in the Medi-Span Master Drug Database as of the date of compounding, except where the employer or carrier, or any entity acting on behalf of the employer or carrier, directly contracts with the provider or provider's assignee for a lower amount.

All pharmaceutical claims submitted for repackaged or relabeled prescription medications shall include the National Drug Code of the original manufacturer. If the original manufacturer of the underlying drug product used in repackaged

or relabeled drugs or compounded medications is not provided or is unknown, then reimbursement shall not exceed one hundred forty percent of the average wholesale price for the original manufacturer's National Drug Code number as listed in the Medi-Span Master Drug Database of the prescription drug that is most closely related to the underlying drug product.

Notwithstanding any other provision in this subsection to the contrary, generic pharmaceuticals shall be substituted for brand name pharmaceuticals unless the prescribing physician certifies that no substitution shall be prescribed because the injured employee's condition does not tolerate a generic pharmaceutical.

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

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

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

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

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

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

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

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

S.B. NO. 2365 S.D. 1

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. (SD1)

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