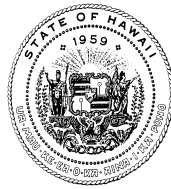


SB2365

LATE

TESTIMONY



STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
830 PUNCHBOWL STREET, ROOM 321
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February 3, 2014

To: The Honorable Clayton Hee, Chair,
The Honorable Maile S. L. Shimabukuro, Vice Chair, and
Members of the Senate Committee on Judiciary & Labor

Date: Tuesday, February 4, 2014
Time: 10:00 a.m.
Place: Conference Room 016, State Capitol

From: Dwight Y. Takamine, Director
Department of Labor and Industrial Relations (DLIR)

Re: S.B. No. 2365 Relating to Insurance Claims

I. OVERVIEW OF PROPOSED LEGISLATION

SB 2365 proposes to amend Section 386-21, Hawaii Revised Statutes, by:

- Placing a price cap on prescription drugs to not exceed one hundred forty percent (140%) of the average wholesale price as set by the original manufacturer of the dispensed prescription drug identified by its National Drug Code as published in Red Book: Pharmacy's Fundamental Reference, as of date of dispensing;
- Providing that any prescription drug not available at a major retail pharmacy within the State will not be reimbursable unless specifically approved by the director through rulemaking and;
- Determining reimbursements for compound medications, repackaged or relabeled drugs.

The DLIR supports the intent of this proposal that seeks to control the prescriptive costs in the Hawaii workers' compensation system. The department's specific suggestions for the Committee's consideration follow below.

II. CURRENT LAW

Workers' Compensation Medical Fee Schedule (WCMFS) Administrative Rule, Section 12-15-55 Drugs, supplies and materials, allows for prescription drugs to be reimbursed at the average wholesale price as listed in Red Book plus forty percent

when sold by a physician, hospital, pharmacy, or provider of service other than a physician. All billings for prescriptive drugs must include the National Drug Code listed in Red Book followed by the average wholesale price as listed at time of purchase by the provider of service.

In addition, approved generics shall be substituted for brand name pharmaceuticals unless the prescribing physician certifies no substitution is permitted because the injured employee's condition will not tolerate a generic preparation.

The current statute and rules do not address the reimbursement of repackaged, relabeled and compound medication.

III. COMMENTS ON THE SENATE BILL

The department supports the intent of the measure and provides comments on the content below.

This bill proposes that if a drug is not available at a major retail pharmacy within the State, it will not be reimbursable unless approved by the director through rulemaking in accordance with section 91-3. DLIR is unsure why a medication prescribed for workers' compensation would not be available at major retail pharmacies.

A proposal (SB2923) to require the department to conduct public hearings annually to update the Workers' Compensation Medical Fee Schedule is based upon the recommendations of the State Auditor's Report No. 13-10, "*A Report on Methodology for the Department of Labor & Industrial Relations' Workers' Compensation Medical Fee Schedule.*" The DLIR's support of that proposal is predicated upon the staffing resources and funding recommendations suggested by the State Auditor¹.

This proposal also does not take into account reimbursement for generic medication. Section 12-15-55(c) of the WCMFS Administrative Rules requires approved generics to be substituted for brand name drugs unless the prescribing physician certifies the employee's condition will not tolerate generic preparations. This proposal will not allow generic medications and require physicians to prescribe costlier brand name drugs when a less expensive appropriate generic drug is available.

The department believes the proposal references the following key words be defined to avoid confusion and assumptions:

¹ it would be a great strain on the department if the director would also be required to go through the rulemaking process to adopt a specific drug each time it is not available at a major retail pharmacy. The department does not have the staffing and points out that this would certainly be time consuming and a costly burden on the department.

1. Average Wholesale Price (AWP)
2. Original Manufacturer
3. National Drug Code
4. Date of Dispensing
5. Repackaged Drugs
6. Relabeled Drugs
7. Compound Medication
8. Underlying Drug Product

The department offers suggested language for the Committee's consideration in an attachment.

(h) Payment for all forms of prescription drugs including repackaged and relabeled drugs shall not exceed 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 Red Book: Pharmacy's Fundamental Reference as of the date of purchase; provided that any prescription drug that is not available at a retail pharmacy within the State shall not be reimbursed.

Payment for compounded medications shall not exceed the sum of one hundred forty per cent 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 Red Book: Pharmacy's Fundamental Reference as of the date of purchase.

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 per cent of the average wholesale price for the original manufacturer's National Drug Code number as listed in the Red Book: Pharmacy's Fundamental Reference of the prescription drug which is mostly closely related to the underlying drug product.

Notwithstanding the forgoing, generics shall be substituted for brand name pharmaceuticals unless the prescribing physician certifies no substitution is permitted because the injured employee's condition will not tolerate a generic preparation.

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 Red Book: Pharmacy's Fundamental Reference of the prescription drug that is most closely related to the underlying drug product.



**To: Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
Members of the Committee on Judiciary and Labor**

Date: Tuesday, February 4, 2014

Time: 10:00 am

Place: Conference Room 016

State Capitol

415 South Beretania Street

COMMENTS ON SENATE BILL 2365

Automated HealthCare Solutions (AHCS) submits the following testimony related to Senate Bill 2365 (SB 2365).

AHCS supports the intent of SB 2365 to prevent drug prices from becoming an unreasonable cost driver of health care in workers' compensation and motor vehicle claims but opposes specific provisions of the legislation which are detailed below.

First, AHCS opposes the language which provides that reimbursement "shall not exceed" 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. AHCS respectfully submits that the reimbursement terms should be exact. Language providing that reimbursement "shall not exceed" one hundred forty per cent creates a reimbursement ceiling without imposing any sort of reimbursement floor. This is surely to lead to addition disputes between the parties as to what constitutes proper reimbursement for any given claim, further exacerbating an already backlogged dispute process. Accordingly, AHCS suggests that the language be amended so that reimbursement "shall be" one hundred forty per cent of the average wholesale price set by the original manufacturer, absent the parties directly contracting for a lower amount. To the extent the parties wish to contract for rates below the fee schedule amount, AHCS suggests including a provision which allows the parties to directly contract for a lower amount.

Second, AHCS opposes the entire provision related to reimbursement of prescription drugs not available at a major retail pharmacy. As written, this definition and proposed

verification process is unworkable, ambiguous and likely to lead to additional litigation as physicians battle with payors over whether certain dispensed medications are 1) deemed available at a “major retail pharmacy” and/or 2) pending approval by the director. SB 2365 was founded on the premise of eliminating the ambiguities that have plagued Hawaii’s workers’ compensation statutes and rules for years, yet the ambiguous language which references “major retail pharmacy” will actually result in a step back for the workers’ compensation system as endless time and resources will be wasted on interpreting an ambiguous phrase that bears no relevance in determining accurate reimbursement.

Third, AHCS opposes the use of RedBook as the official state prescription medication pricing sourcebook and instead recommends the adoption of Medi-Span Master Drug Database (Medi-Span). Medi-Span is considered a more widely used and comprehensive sourcebook and provides for easier integration into existing billing software. As a result, AHCS believes this is a more accurate and user-friendly pricing publication for all parties.

Lastly, AHCS has reached out to other stakeholders in an effort to bridge the gap between the parties and come up with a compromise bill acceptable to all those affected by this legislation. AHCS would like to point out that while the parties are close to a resolution, several of the foregoing issues still need to be resolved. AHCS is hopeful that the parties can work out the remaining differences in the near future.

Thank you for your consideration.

Jennifer Maurer, Esq.
Government Relations Director
Automated HealthCare Solutions, LLC

WIMAH

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MAULI OLA
THE POWER OF HEALING

FEBRUARY 4, 2014

COMMITTEE ON JUDICIARY AND LABOR

SENATE BILL 2365 RELATING TO INSURANCE CLAIMS

LIMITS THE REIMBURSEMENT PAYMENTS OF PRESCRIPTION MEDICATIONS, INCLUDING RELABELED OR REPACKAGED PRESCRIPTION MEDICATION, IN WORKERS' COMPENSATION CLAIMS.

WORK INJURY MEDICAL ASSOCIATION OF HAWAII SUPPORTS THE INTENT OF SENATE BILL 2365. WE FEEL THERE ARE SOME ISSUES WITHIN THIS BILL THAT NEEDS TO BE RESOLVED.

RESOLUTION ON THIS MATTER WOULD BE APPRECIATED WITH SOMETHING THAT BOTH SIDES CAN LIVE WITH.

YOUR PASSAGE OF THIS BILL WITH AMENDMENTS WOULD BE APPRECIATED.

GEORGE M. WAIALEALE
EXECUTIVE DIRECTOR
WORK INJURY MEDICAL ASSOCIATION OF HAWAII

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