

HB 1631

RELATING TO WORKERS' COMPENSATION PRESCRIPTION DRUG REIMBURSEMENT

A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION PRESCRIPTION DRUG
REIMBURSEMENT.

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

1 SECTION 1. The legislature finds that Act 231, Session
2 Laws of Hawaii 2014 (Act 231), enacted a new statutory section
3 with the purpose of curtailing alarming cost increases of
4 prescription drugs and compounds in the workers' compensation
5 system. Since the enactment of Act 231, further analysis of
6 other states shows the reimbursement rates range widely among
7 the thirty-seven states that reimburse prescription drugs on the
8 basis of a percentage of average wholesale price. Notably,
9 Hawaii has the highest reimbursement rate for brand name and
10 generic drugs at forty per cent over average wholesale price.

11 The legislature further finds that the national average
12 reimbursement rate is three per cent below average wholesale
13 price, plus a \$4.32 dispensing fee, for brand name drugs, and
14 four per cent below average wholesale price, plus a \$4.94
15 dispensing fee, for generic drugs. More specifically,
16 California reimburses at a rate of seventeen per cent below



H.B. NO. 1631

1 average wholesale price with a \$7.25 dispensing fee for both
2 brand name and generic drugs. Oregon reimburses at 16.5 per
3 cent below average wholesale price with a \$2 dispensing fee for
4 both brand name and generic drugs. These two states are
5 considered progressive workers' compensation states and have
6 worked on their systems extensively. Louisiana has the next
7 highest rate of reimbursement at ten per cent over average
8 wholesale price with a \$10.51 dispensing fee for brand name
9 drugs.

10 The purpose of this Act is to bring Hawaii closer to the
11 rest of the nation in terms of its dispensing policies and
12 reimbursement rates for prescription drugs in the workers'
13 compensation system.

14 SECTION 2. Section 386-21.7, Hawaii Revised Statutes, is
15 amended as follows:

16 1. By amending the title to read:

17 "[+]§386-21.7[+] Prescription drugs; pharmaceuticals."

18 2. By amending subsections (a), (b), (c), and (d) to
19 read:

20 "(a) Notwithstanding any other provision to the contrary,
21 immediately after a work injury is sustained by an employee and



1 so long as reasonably needed, the employer shall furnish to the
2 employee all prescription drugs as the nature of the injury
3 requires[-], except that physician-dispensed prescription drugs
4 shall only be provided during the first thirty days from the
5 date of injury. The liability for the prescription drugs shall
6 be subject to the deductible under section 386-100.

7 (b) Payment for all forms of prescription drugs including
8 repackaged and relabeled drugs shall be one hundred [~~forty~~] one
9 per cent of the average wholesale price set by the original
10 manufacturer of the dispensed prescription drug as identified by
11 its National Drug Code and as published in the Red Book:
12 Pharmacy's Fundamental Reference as of the date of dispensing,
13 except where the employer or carrier, or any entity acting on
14 behalf of the employer or carrier, directly contracts with the
15 provider or the provider's assignee for a lower amount.

16 (c) Payment for compounded prescription drugs shall be the
17 sum of one hundred [~~forty~~] one per cent of the average wholesale
18 price by gram weight of each underlying prescription drug
19 contained in the compounded prescription drug. For compounded
20 prescription drugs, the average wholesale price shall be that
21 set by the original manufacturer of the underlying prescription



1 drug as identified by its National Drug Code and as published in
2 the Red Book: Pharmacy's Fundamental Reference as of the date
3 of compounding, except where the employer or carrier, or any
4 entity acting on behalf of the employer or carrier, directly
5 contracts with the provider or provider's assignee for a lower
6 amount.

7 (d) All pharmaceutical claims submitted for repackaged,
8 relabeled, or compounded prescription drugs shall include the
9 National Drug Code of the original manufacturer. If the
10 original manufacturer of the underlying drug product used in
11 repackaged, relabeled, or compounded prescription drugs is not
12 provided or is unknown, then reimbursement shall be one hundred
13 [~~forty~~ one per cent of the average wholesale price for the
14 original manufacturer's National Drug Code number as listed in
15 the Red Book: Pharmacy's Fundamental Reference of the
16 prescription drug that is most closely related to the underlying
17 drug product."

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



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1 SECTION 4. This Act shall take effect on July 1, 2018.

2

INTRODUCED BY:  _____

JAN 10 2018



H.B. NO. 1631

Report Title:

Workers' Compensation; Prescription Drugs; Reimbursement

Description:

Limits physician-dispensed prescription drugs in workers' compensation claims to the first 30 days from the work injury date. Lowers the reimbursement rates of prescription drugs 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.



HB 1631

TESTIMONY

TESTIMONY BEFORE THE HOUSE OF REPRESENTATIVES

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Tuesday, January 30, 2018
9:30 A.M.

H.B. 1631
RELATING TO WORKERS' COMPENSATION PRESCRIPTION DRUG REIMBURSEMENT

By Marleen Silva
Director, Workers' Compensation
Hawaiian Electric Company, Inc.

Chair Johanson, Vice Chair Holt, and Members of the Committee:

Hawaiian Electric Co. Inc., its subsidiaries, Maui Electric Company, Ltd., and Hawaii Electric Light Company, Inc. **strongly support H.B. 1631.** Our companies represent over 2,500 employees throughout the State.

This bill proposes to amend the reimbursement rate for all prescription drugs, and compounded prescription drugs, from 140% to 101% of the average wholesale price ("AWP") as published in the Red Book: Pharmacy's Fundamental Reference. In addition, it limits physician-dispensed prescription drugs to the first thirty days from the date of a work injury.

According to the Pharmacy Resource Guide August 2016 report, of the 37 states that reimburse prescription drugs on the basis of a percentage of the AWP, Hawaii has the highest reimbursement rate for brand name and generic drugs in the nation, at 40% over the AWP. There is no valid reason for this disparity in the costs. Reducing this reimbursement rate in this way would attempt to slowly bring Hawaii in line with other states.

We also support the measure to put some safety controls around the time frame for the dispensing of physician-dispensed prescription drugs, limiting it to the first thirty days from the date of injury. Physician-dispensed drug costs continue to be significantly higher when compared to pharmacy costs. This is because the drug manufacturer can change a dosage, thereby creating a new National Drug Code and setting a new price. We feel this is a reasonable time frame for injuries to be diagnosed and treatment to be stabilized. Physician dispensing is not necessary to give injured workers timely access to appropriate medication. Prescriptions from a pharmacy, or sent through mail order directly to the home, can safely accommodate the injured worker at a much lower cost and reduce the potential risk of abuse and addiction should the dispensing continue for the life of the claim.

For these reasons, we strongly support H.B. 1631 and respectfully request this measure be passed.

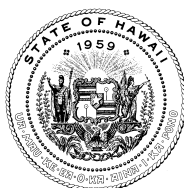
Thank you for this opportunity to submit testimony.

HB 1631

**LATE
TESTIMONY**

DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LIEUTENANT GOVERNOR



LEONARD HOSHIJO
ACTING DIRECTOR

**STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

830 PUNCHBOWL STREET, ROOM 321

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Email: dlir.director@hawaii.gov

January 30, 2018

To: The Honorable Aaron Ling Johanson, Chair;
The Honorable Daniel Holt, Vice Chair; and
Members of the House Committee on Labor & Public Employment

Date: Tuesday, January 30, 2018
Time: 9:30 a.m.
Place: Conference Room 309, State Capitol

From: Leonard Hoshijo, Acting Director
Department of Labor and Industrial Relations (DLIR)

**Re: H.B. No. 1631 RELATING TO WORKERS' COMPENDATION
PRESCRIPTION DRUG REIMBURSEMENT**

I. OVERVIEW OF PROPOSED LEGISLATION

HB1631 proposes to amend section 386-21.7, Hawaii Revised Statutes (HRS), to establish a reimbursement rate for prescription drugs and to limit physician dispensed prescription drugs in the following manner:

- Specifying that the reimbursement rate for all forms of prescription drugs including repackaged & relabeled drugs, and compound prescription drugs shall be one hundred one (101%) per cent of the average wholesale price.
- Physician dispensed prescription drugs for an injured worker shall be limited to the first thirty days from the date of injury.

The Department supports the intent of the measure and offers comments.

II. CURRENT LAW

Currently, section 386-21.7, HRS, allows prescription and compound drugs to be reimbursed at up to one hundred forty per cent of the average wholesale price. The law does not include a time limit for physician dispensed prescriptions.

III. COMMENTS ON THE HOUSE BILL

The Department supports the intent of the measure to bring Hawaii closer to the rest of the nation in terms of its reimbursements rates for prescription drugs in the workers' compensation system. According to the National Council on Compensation Insurance (NCCI) October 2017 Medical Data Report, Hawaii prescription drug costs are 15% of Workers' Compensation costs in comparison to the Region at 8% and Countrywide at 10%.

Hawaii has the highest pharmacy reimbursement rates in the country for both brand and generic rate (see attached Pharmacy Resource Guide Report chart). Currently, Hawaii's prescription rate is average wholesale price plus up to 40%. The national average reimbursement rate is 97% of the average wholesale price.

Regarding the thirty-day limit of physician dispensing, the Department appreciates the intent but does have some concerns about the unintended consequences for access to prescriptive care for those workers who are incapacitated or live in rural areas.

2016 Pharmacy State Fee Schedule Detail

State	Brand Rate	Generic Rate	Remarks
AK	AWP + \$5.00	AWP + \$10.00	
AL	AWP + 5% + \$8.92	AWP + 5% + \$11.58	
AR	AWP + \$5.13	AWP + \$5.13	
AZ	AWP - 5% + \$7.00	AWP - 15% + \$7.00	
CA	AWP - 17% + \$7.25	AWP - 17% + \$7.25	
CO	AWP + \$4.00	AWP + \$4.00	
CT	AWP + \$5.00	AWP + \$8.00	
DE	AWP - 18.2% + \$3.72	AWP - 25.6% + \$4.65	
FL	AWP + \$4.18	AWP + \$4.18	
GA	AWP + \$4.31	AWP + \$6.45	
HI	AWP + 40%	AWP + 40%	
ID	AWP + \$5.00	AWP + \$8.00	
KS	AWP - 10% + \$3.00	AWP - 15% + \$5.00	
KY	AWP + \$5.00	AWP + \$5.00	
LA	AWP + 10% + \$10.51	AWP + 40% + \$10.51	Physicians may only dispense controlled substances or drugs of concern if registered as a dispensing physician and only up to a single 48-hour supply.
MA	AWP - 16% + \$3.00	AWP - 16% + \$3.00	
MI	AWP - 10% + \$3.50	AWP - 10% + \$5.50	
MN	AWP - 12% + \$3.65	AWP - 12% + \$3.65	
MS	AWP + \$5.00	AWP + \$5.00	
MT	AWP - 10% + \$3.00	AWP - 25% + \$3.00	
NC	AWP - 5%	AWP - 5%	
ND	\$4.00 dispensing fee	\$4.00 dispensing fee	Compounds AWP - 72%
NM	AWP - 10% + \$5.00	AWP - 10% + \$5.00	
NV	AWP + \$10.54	AWP + \$10.54	
NY	AWP - 12% + \$4.00	AWP - 20% + \$5.00	
OH	AWP - 9% + \$3.50	AWP - 9% + \$3.50	
OK	AWP - 10% + \$5.00	AWP - 10% + \$5.00	
OR	AWP - 16.5% + \$2.00	AWP - 16.5% + \$2.00	
PA	AWP + 10%	AWP + 10%	
RI	AWP - 10%	AWP - 10%	
SC	AWP + \$5.00	AWP + \$5.00	
TN	AWP + \$5.10	AWP + \$5.10	
TX	AWP + 9% + \$4.00	AWP + 25% + \$4.00	
VT	AWP + \$3.15	AWP + \$3.15	
WA	AWP - 10% + \$4.50	AWP - 50% + \$4.50	Doesn't pay for physician dispensed or repackaged drugs
WI	AWP + \$3.00	AWP + \$3.00	
WY	AWP - 10% + \$5.00	AWP - 10% + \$5.00	
Federal	AWP - 15% + \$4.00	AWP - 40% + \$4.00	Division of Federal Employees' Compensation
Federal	AWP - 10% + \$4.00	AWP - 25% + \$4.00	Non-DFEC

DAVID Y. IGE
GOVERNOR



RYKER WADA
INTERIM DIRECTOR

DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
235 S. BERETANIA STREET
HONOLULU, HAWAII 96813-2437

January 26, 2018

TESTIMONY TO THE
HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

For Hearing on January 30, 2018
9:30 a.m., Conference Room 309

BY
Department of Human Resources Development
RYKER WADA
INTERIM DIRECTOR

House Bill No. 1631
Relating to Workers' Compensation; Medical Examination

WRITTEN TESTIMONY ONLY

TO CHAIRPERSON JOHANSON, VICE CHAIR HOLT AND MEMBERS OF THE
COMMITTEE:

Thank you for the opportunity to provide **support** on H.B. 1631.

The purpose of H.B. 1631 relating to workers' compensation claims are to amend the reimbursement rate for prescription drugs in the workers' compensation system from 140% to 101% of the average wholesale price and restrict the provision of physician-dispensed prescription drugs to a specified time following injury.

The Department of Human Resources Development ("DHRD") has a fiduciary duty to administer the State's self-insured workers' compensation program and its expenditure of public funds.

DHRD supports this proposal as it will help to bring Hawaii more in line with the rest of the nation on its reimbursement rate and reduce medical costs for workers' compensation claims. According to the Department of Labor and Industrial Relations Workers' Compensation Data Books for 2011 and 2015, total medical costs for all

Hawaii employers increased 21% from \$103.5M in 2011 to \$125.6M in 2015. Total workers' compensation costs over that same period also increased 21%, from \$246.7M to \$298.2M, showing how much medical costs drive the overall costs for workers' compensation claims. Without measures such as this bill, we expect medical costs to continue to increase in light of the 2015 Hawaii Supreme Court decision, Pulawa v. Oahu Construction Co., Ltd., 136 Haw. 217 (Haw. 2015), which liberalized the standard for medical treatment from "reasonable and necessary" to "reasonably needed" and allows claimants the opportunity for the greatest possible medical rehabilitation."

However, in lieu of the 101% reimbursement rate in this bill, we recommend consideration of the lower rate of -10% set forth in H.B. 706.

Thank you for the opportunity to testify on this bill.



LATE

**To: Rep. Aaron Ling Johanson, Chair
Rep. Daniel Holt, Vice-Chair
Members of the Committee on Labor & Public Employment**

Date: Tuesday, January 30, 2018

Time: 9:30 AM

**Place: Conference Room 309
State Capitol
415 South Beretania Street**

OPPOSITION TO HB 1631

Automated HealthCare Solutions (AHCS) submits the following testimony in opposition to HB 1631.

HB 1631 has two components: (1) restricts physicians' ability to dispense medications to injured workers to the first thirty days from the date of injury; and (2) reduces reimbursement for prescription medications, including repackaged and relabeled medications, from 140% of the average wholesale price set by the original manufacturer of the dispensed medication to 101% of the average wholesale price set by the original manufacturer of the dispensed medication. Respectfully, both of these provisions are problematic.

1) Problems With Limiting Physician Dispensed Medication

HB 1631 restricts physicians' ability to dispense medication to injured workers to the first thirty days from the date of injury while imposing no restrictions on the pharmacies' ability to dispense. Limiting injured workers' ability to obtain medication directly from their physician interferes with the doctor-patient relationship and ignores the various benefits associated with physician dispensing.

When doctors dispense, patients can begin their medication treatment immediately. This greatly increases compliance with the prescribed treatment regimen because there is a 100% fill rate (compared to fill rates of only 70% to 80% at pharmacies, primarily due to insurance and transportation related hurdles). Increased compliance with the treatment regimen can facilitate a quicker recovery/return to work. HB 1631 ignores the fact that workers' compensation is not like regular healthcare; filling a prescription at a pharmacy can be far more difficult. It is often overlooked that many injured workers lack reliable transportation or have difficulty getting to their physician's office, let alone make another trip to the

pharmacy. If they can get to a pharmacy, many pharmacies will deny filling prescriptions altogether if the claim is denied pending investigation, forcing the injured worker to either pay out-of-pocket for the medication or simply go without the medication entirely. The end result is many injured workers failing to receive the prescription medications they need when they need them, which can result in aggravated injuries and longer delays before the employee returns to work.

Arbitrarily restricting physicians from dispensing – while allowing pharmacies to dispense without limitation – is wholly unjustified, targets physician dispensers for no apparent reason and does nothing more than create additional obstacles for injured workers in the State by making it more difficult for them to obtain their medication.

2) Problems With Reducing the Reimbursement Rate

In 2014, Act 231 changed the reimbursement rate for medications and created one fee schedule for “all forms of prescription drugs including repackaged and relabeled drugs.” In doing so, the cost of physician dispensed medication was dramatically reduced. HB 1631 does not cite any Hawaii data that indicates medication costs are a problem and there is no basis for making a statutory change to the reimbursements for pharmaceuticals in Hawaii’s workers’ compensation system.

Thank you for your consideration.

Jennifer Bean
Vice President of Government Affairs
Automated HealthCare Solutions, LLC

Hawaii State Legislature
House Committee on Labor and Public Employment
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

January 29, 2018

Filed via electronic testimony submission system

Dear Representative Aaron Ling Johanson, Chair; Representative Daniel Holt, Vice-Chair; and honorable committee members:

Thank you for providing the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to your committee for the January 30, 2018, public hearing. Unfortunately, I will not be able to attend the public hearing, because of a previously scheduled professional obligation. NAMIC's written comments need not be read into the record, so long as they are referenced as a formal submission and are provided to the committee for consideration.

The National Association of Mutual Insurance Companies (NAMIC) is the largest property/casualty insurance trade association in the country, with more than 1,400 member companies. NAMIC supports regional and local mutual insurance companies on main streets across America and many of the country's largest national insurers. NAMIC members represent 40 percent of the total property/casualty insurance market, serve more than 170 million policyholders, and write nearly \$225 billion in annual premiums. NAMIC has 84 members who write property/casualty/workers' compensation in the State of Hawaii, which represents 28% of the insurance marketplace.

The proposed legislation has two important pro-injured worker, pro-public safety, pro-cost-efficiency provisions:

- 1) "physician-dispensed prescription drugs shall only be provided during the first thirty days from the date of injury";
- 2) "repackaged, relabeled, or compounded prescription drugs ... reimbursement shall be one hundred and one percent (currently one hundred and 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."

NAMIC is pleased to submit written testimony in support of this workers' compensation prescription drug safety legislation. Misuse and abuse of prescription drugs use is at an epidemic level in the nation, and thoughtful legislative action like what is being proposed in this bill is important to the



health and welfare of the citizens of the State of Hawaii. Limiting the length of an initial medication prescriptions is professionally responsible and in the best interest of injured workers, who could become dependent upon medication when physical therapy and other forms of treatment may be more therapeutic and safer for the injured worker.

We also support the state legislature's stated objective of trying to "bring Hawaii closer to the rest of the nation in terms of its dispensing policies and reimbursement rates for prescription drugs in the workers' compensation system".

In addition to the laudable pro-public safety objective of the bill, NAMIC also fully supports HB 1631, because it is a reasonable workers' compensation cost-containment measure that will help prevent over-pricing and over-prescribing of medication to injured workers, that adversely impacts the cost of workers' compensation insurance for small businesses. NAMIC believes that the proposed legislation will help Hawaii abandon its unenviable status as the state with the highest reimbursement rate for brand name and generic drugs in the country.

For the aforementioned reasons, NAMIC respectfully requests a **YES VOTE on this common sense, pro-injured worker, pro-workers' compensation prescription drug reform legislation.**

Thank you for your time and consideration. Please feel free to contact me at 303.907.0587 or at crataj@namic.org, if you would like to discuss NAMIC's written testimony.

Respectfully,

Christian John Rataj, Esq.
NAMIC Senior Regional Vice President
State Government Affairs, Western Region

TESTIMONY OF LINDA O'REILLY

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
Representative Aaron Ling Johanson, Chair
Representative Daniel Holt, Vice Chair

Tuesday, January 30, 2018
9:30 a.m.

HB 1631

Chair Johanson, Vice Chair Holt, and members of the Committee on Labor and Public Employment, my name is Linda O'Reilly, Assistant Vice President of Claims - Workers Compensation of First Insurance Company of Hawaii. I am testifying today on behalf of Hawaii Insurers Council. Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately forty percent of all property and casualty insurance premiums in the state.

Hawaii Insurers Council strongly **supports** this bill.

In the 2017 Legislature, a similar measure in HB 1181 crossed from the House to the Senate and passed its first committee before it died. We believe that this measure takes into account feedback from the Department of Labor and Industrial Relations (DLIR), Department of Human Resource Development (DHRD) and City and County of Honolulu from the 2017 Legislature and the draft so reflects it in HB 1631.

Hawaii's reimbursement rate for prescription drugs is by far the highest in the nation and an outlier, at the Average Wholesale Price (AWP) plus 40%. This bill would reduce the reimbursement rate from AWP +40% to AWP +1% and would limit physician-dispensed drugs to 30 days. After the 30-day period, an injured worker may obtain their prescription drugs from a pharmacy or have them mailed directly to their homes.

According to NCCI, prescription drug prices increased 11% in 2014, which is much greater than the ten-year average of 4%. Physician-dispensed drug costs in Hawaii are 20% of total prescription drug costs. NCCI lists only 7 states as high-cost physician-dispensed drug states of which Hawaii is one. The other states are Connecticut, Delaware, Florida, Georgia, Illinois, and Maryland. High-cost states mean physician-dispensed drugs are 16% or greater as a percentage of total drug costs.

Thirty-seven states use a percentage of AWP to reimburse prescription drugs. Hawaii is the highest at AWP +40%. Seventeen states reimburse at a negative percentage of AWP and includes 8 states who reimburse at minus 10% of AWP. DLIR did their own in-house analysis and believes that a fair reimbursement rate for Hawaii is AWP +1% which is reflected in the bill. This would bring Hawaii closer to the range of what other states are doing in this area.

We believe setting an appropriate timeframe in which a physician may dispense drugs will assist in controlling the inordinately high cost of drugs while still providing timely and appropriate care for the injured worker. We believe that timeframe is at most 30 days from the date of injury after which time the injured worker will have established care and the physician will have diagnosed the injury or injuries. The injured worker would then be able to obtain whatever necessary drugs from a pharmacy of their choosing at a much lower cost including the option for mail delivery directly to their home.

While we continue to actively participate in the WorkersqCompensation Working Group including discussion on other measures to control drug costs, we believe this interim step will reduce costs in this area.

Thank you for the opportunity to testify.

HB-1631

Submitted on: 1/29/2018 11:26:19 PM

Testimony for LAB on 1/30/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
cathy wilson	AHCS	Oppose	No

Comments:

LATE

HB-1631

Submitted on: 1/26/2018 3:53:24 PM

Testimony for LAB on 1/30/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Kathlynn Mizusawa	City & County of Honolulu	Support	No

Comments: