

JAN 24 2019

A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION.

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

1 SECTION 1. The legislature finds that, among other things,
2 Act 230, Session Laws of Hawaii 2016, established a legislative
3 oversight working group to develop and recommend legislation to
4 improve the medical cannabis dispensary system in the State to
5 ensure safe and legal access to medical cannabis for qualifying
6 patients. The working group was tasked with addressing issues
7 related to the medical cannabis dispensary program in the State,
8 including operations, edibles, and any issues the working group
9 found relevant to the medical cannabis dispensary program.

10 The legislature further finds that one of the topics
11 considered by the working group was the potential for medical
12 cannabis to be reimbursable via health insurance and workers'
13 compensation. However, because the issues surrounding the topic
14 of insurance reimbursement for medical cannabis are extremely
15 complex, the legislature concluded that it was prudent to
16 establish a separate working group specifically tasked with
17 addressing this topic.



1 Such a working group was convened pursuant to Act 161,
2 Session Laws of 2018, which included stakeholders from the
3 medical cannabis patient community, medical cannabis dispensary
4 licensees, a mutual benefit society, a health maintenance
5 organization, and a medicaid managed care plan. The legislature
6 finds that the working group established in its final report
7 from December 2018, that workers' compensation reimbursement of
8 medical cannabis was being enacted in other states through
9 legislation, court rulings, and administrative agency decisions.

10 Additionally, the legislature finds that injured workers
11 compelled to rely on this form of medicine as the only effective
12 relief for their suffering, may accumulate expenses in the
13 thousands of dollars per year.

14 Accordingly, the purpose of this Act is to make medical
15 cannabis reimbursable via the workers' compensation system in
16 certain circumstances for patients registered with the
17 department of health's medical cannabis program.

18 SECTION 2. Section 386-21.7, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§386-21.7 Prescription drugs; medical cannabis;**
21 **pharmaceuticals.** (a) Notwithstanding any other provision to



1 the contrary, immediately after a work injury is sustained by an
2 employee and so long as reasonably needed, the employer shall
3 furnish to the employee all prescription drugs, or medical
4 cannabis produced and sold pursuant to chapter 329D, as the
5 nature of the injury requires; provided that initial concurrent
6 prescriptions for opioids and benzodiazepines shall meet the
7 requirements of section 386-29. The liability for the
8 prescription drugs, or medical cannabis, shall be subject to the
9 deductible under section 386-100.

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

19 (c) Payment for compounded prescription drugs shall be the
20 sum of one hundred forty per cent of the average wholesale price
21 by gram weight of each underlying prescription drug contained in



1 the compounded prescription drug. For compounded prescription
2 drugs, the average wholesale price shall be that set by the
3 original manufacturer of the underlying prescription drug as
4 identified by its National Drug Code and as published in the Red
5 Book: Pharmacy's Fundamental Reference as of the date of
6 compounding, except where the employer or carrier, or any entity
7 acting on behalf of the employer or carrier, directly contracts
8 with the provider or provider's assignee for a lower amount.

9 (d) Reimbursement for medical cannabis shall be subject to
10 the following conditions:

11 (1) The maximum reimbursement for medical cannabis shall
12 be determined by the method and amount set forth in
13 the health care provider fee schedule;

14 (2) Medical cannabis may be reasonable and necessary
15 medical treatment only where an authorized health care
16 provider certifies that the potential benefits of the
17 medical use of cannabis would likely outweigh the
18 health risks to the worker and has explained the
19 potential risks and benefits of the medical use of
20 cannabis to the worker;



- 1 (3) At least one physician certifying the worker for
2 participation in the medical cannabis program,
3 provided for in chapter 329, part IX, shall be an
4 authorized health care provider;
- 5 (4) The worker must be enrolled in the medical cannabis
6 program pursuant to chapter 329, part IX, and provide
7 proof of enrollment and qualifying condition prior to
8 the date of purchase of medical cannabis to be
9 eligible for reimbursement; and
- 10 (5) The worker shall be reimbursed upon the following
11 conditions:
- 12 (A) Only the worker shall be reimbursed for the out
13 of pocket cost of the medical cannabis;
- 14 (B) The worker shall submit an itemized receipt
15 issued by a licensed producer under chapter 329D;
16 provided that the receipt includes the name and
17 address of the licensed producer and the worker,
18 the date of purchase, the quantity in grams of
19 dry weight, the form of medical cannabis
20 purchased, and the purchase price;



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- 1 (C) The worker shall be reimbursed no more than the
2 maximum set forth in the fee schedule;
- 3 (D) Reimbursement shall be limited to the quantity
4 set for in the fee schedule;
- 5 (E) Reimbursement for paraphernalia, as defined in
6 the Controlled Substances Act, shall not be made,
7 with the exception of "pre-filled and sealed
8 containers" and "devices that provide safe
9 pulmonary administration" of manufactured
10 cannabis products as listed in section 329D-10;
11 and
- 12 (F) Reimbursement shall not be allowed for expenses
13 related to personal production or cannabis
14 acquired from sources other than a licensed
15 producer.
- 16 ~~[(d)]~~ (e) All pharmaceutical claims submitted for
17 repackaged, relabeled, or compounded prescription drugs shall
18 include the National Drug Code of the original manufacturer. If
19 the original manufacturer of the underlying drug product used in
20 repackaged, relabeled, or compounded prescription drugs is not
21 provided or is unknown, then reimbursement shall be one hundred



1 forty per cent of the average wholesale price for the original
2 manufacturer's National Drug Code number as listed in the Red
3 Book: Pharmacy's Fundamental Reference of the prescription drug
4 that is most closely related to the underlying drug product.

5 ~~[(e)]~~ (f) Notwithstanding any other provision in this
6 section to the contrary, equivalent generic drug products shall
7 be substituted for brand name pharmaceuticals unless the
8 prescribing physician certifies that no substitution shall be
9 prescribed because the injured employee's condition does not
10 tolerate an equivalent generic drug product.

11 ~~[(f)]~~ (g) For purposes of this section, "equivalent
12 generic drug product" has the same meaning as provided in
13 section 328-91."

14 SECTION 3. Section 329-124, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "~~[(f)] §329-124 [(f)]~~ **Insurance not applicable.** This part shall
17 not be construed to require insurance coverage for the medical
18 use of cannabis~~[-]~~, except as provided in chapter 386."

19 SECTION 4. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

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1 SECTION 5. This Act shall take effect upon its approval.

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Report Title:

Workers' Compensation; Medical Cannabis; Reimbursement

Description:

Requires that workers registered with the department of health's medical cannabis program be reimbursed for the out of pocket cost of medical cannabis through the workers' compensation system in certain circumstances.

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

