

ACT 155

S.B. NO. 2244

A Bill for an Act Relating to Workers' Compensation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that drug overdose deaths and opioid-involved deaths continue to increase in the United States. According to information from the federal Centers for Disease Control and Prevention, the majority of drug overdose deaths involve an opioid. The number of overdose deaths involving opioids has quadrupled since 1999, with more than half a million people dying from drug overdoses between 2000 and 2015. The Centers for Disease Control and Prevention notes that overdoses from prescription opioids are a driving factor in the fifteen-year increase in opioid overdose deaths. Furthermore, although the amount of prescription opioids sold to pharmacies, hospitals, and doctors' offices nearly quadrupled from 1999 to 2010, there has not been an overall change in the amount of pain reported by Americans. The Centers for Disease Control and Prevention also estimates that the total economic burden of prescription opioid misuse in the United States is \$78,500,000,000 a year, including the costs of health care, lost productivity, addiction treatment, and criminal justice involvement.

The legislature further finds that numerous efforts have been made at the national and state levels to respond to the nation's opioid epidemic. A number of states have also taken steps through their workers' compensation systems to stem the overprescribing of opioids to workers injured on the job.

The use of prescription opioids may be a reasonable and appropriate treatment option for some workplace injuries. However, the legislature notes that according to the National Safety Council, research on medical outcomes when opioids are used in workers' compensation has demonstrated that opioid use beyond the acute phase can impair function, be a barrier to recovery, and increase an injured worker's experience of pain.

The legislature therefore finds that it is important to address the opioid epidemic in the workers' compensation system in a manner similar to the way opioid use has been addressed in other areas of state law.

Accordingly, the purpose of this Act is to:

- (1) Require health care providers in the workers' compensation system who are authorized to prescribe opioids to adopt and maintain policies for informed consent to opioid therapy in circumstances that carry elevated risk of dependency; and
- (2) Establish limits for concurrent opioid and benzodiazepine prescriptions in the workers' compensation system.

SECTION 2. Chapter 386, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§386-A Opioid therapy; qualifying injured employees; informed consent process. (a) Beginning on July 1, 2019, any health care provider authorized to prescribe opioids shall adopt and maintain a written policy or policies that include execution of a written agreement to engage in an informed consent process between the health care provider authorized to prescribe opioids and a qualifying injured employee.

(b) If the qualifying injured employee is unable to physically or mentally execute the written agreement pursuant to subsection (a), due to the injury, then the physician shall execute the agreement as soon as the employee's condi-

tion improves. At no time shall the employee be responsible for the payment of the medication prescribed.

(c) The department shall make available on its website a copy of the template for an opioid therapy informed consent process agreement developed by the department of health pursuant to section 329-38.5(b). The template shall be posted to the department's website no later than December 31, 2018.

(d) For the purposes of this section, "qualifying injured employee" means:

- (1) An injured employee requiring opioid treatment for more than three months;
- (2) An injured employee who is prescribed benzodiazepines and opioids together; or
- (3) An injured employee who is prescribed a dose of opioids that exceeds ninety morphine equivalent doses.

(e) A violation of this section shall not be subject to the penalty provisions of part IV of chapter 329.

§386-B Qualifying injured employees; initial concurrent prescriptions; opioids and benzodiazepines. (a) Initial concurrent prescriptions for opioids and benzodiazepines shall not be for longer than seven consecutive days unless a supply of longer than seven days is determined to be reasonably needed for the treatment of:

- (1) Pain experienced while the qualifying injured employee is in post-operative care;
- (2) Chronic pain and pain management;
- (3) Substance abuse or opioid or opiate dependence;
- (4) Cancer;
- (5) Pain experienced while the qualifying injured employee is in palliative care; or
- (6) Pain experienced while the qualifying injured employee is in hospice care;

provided that if a health care provider authorized to prescribe opioids issues a concurrent prescription for more than a seven-day supply of an opioid and benzodiazepine, the health care provider shall document in the qualifying injured employee's medical record the condition for which the health care provider issued the prescription and that an alternative to the opioid and benzodiazepine was not appropriate treatment for the condition.

(b) After an initial concurrent prescription for opioids and benzodiazepines has been made, a health care provider authorized to prescribe opioids may authorize subsequent prescriptions through a telephone consultation with the qualifying injured employee when the health care provider deems such action to be reasonably needed for post-operative care and pain management; provided that the health care provider shall consult with a qualifying injured employee in person at least once every ninety days for the duration during which the health care provider concurrently prescribes opioids and benzodiazepines to the qualifying injured employee.

(c) For the purposes of this section, "qualifying injured employee" has the same meaning as in section 386-A."

SECTION 3. Section 386-21.7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Notwithstanding any other provision to the contrary, immediately after a work injury is sustained by an employee and so long as reasonably needed, the employer shall furnish to the employee all prescription drugs as the

nature of the injury requires[-]; provided that initial concurrent prescriptions for opioids and benzodiazepines shall meet the requirements of section 386-B. The liability for the prescription drugs shall be subject to the deductible under section 386-100.”

SECTION 4. In codifying the new sections added by section 2 and referenced in section 3 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 6. This Act shall take effect upon its approval.

(Approved July 9, 2018.)

Note

1. Edited pursuant to HRS §23G-16.5.