HOUSE OF REPRESENTATIVES
TWENTY-NINTH LEGISLATURE, 2017
STATE OF HAWAII

H.B. NO. 1181 H.D. 2 S.D. 1

A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION PRESCRIPTION DRUG REIMBURSEMENT.

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

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

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

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

The legislature additionally finds that a nationwide drug epidemic, associated with prescription pain relieving drugs, is causing alarming rates of addiction, overdose, and death. It is therefore important to address the opioid epidemic in the workers' compensation arena in a similar manner as opioid use has been addressed in other areas.

The purpose of this Act is to:

(1) Bring Hawaii closer to the rest of the nation in terms of its dispensing policies and reimbursement rates for prescription drugs and compounds in the workers' compensation system; and

(2) Require an opioid therapy informed consent process agreement to be executed between an injured employee and any prescriber of opioids within the State, under certain conditions, and limit reimbursements for certain controlled substances prescribed by a physician to an initial, seven-day supply.

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

"**§386- Injured employees; opioid therapy; informed consent process.** (a) Injured employees and physicians who prescribe opioids shall execute a written agreement to engage in an informed consent process if:

(1) An injured employee requires opioid treatment for more than three months;

(2) An injured employee is prescribed benzodiazepines and opioids together; or

(3) An injured employee is prescribed a dose of opioids that exceeds ninety morphine equivalent doses.

(b) The harm reduction services branch of the department of health shall develop and make available a template of an

opioid therapy informed consent process agreement for use in the State and shall advise the department on the contents of the agreement. The template for the opioid therapy informed consent process agreement shall include, at a minimum, the following:

(1) A statement that advises the injured employee that initial prescriptions for opioids and benzodiazepines shall be limited to a maximum of seven consecutive days;

(2) A statement that the physician has discussed with the injured employee the possibility of overdose on opioids, the availability of co-prescribing naloxone, and education about how and when to use the prescribed opioids and naloxone;

(3) A statement that the physician has discussed with the injured employee non-opioid treatment options for chronic pain;

(4) An outline of initial and ongoing functional treatment goals established at the initiation of the informed consent process, and a plan for the ongoing assessment of progress toward the goals;

(5) Consent to an initial assessment using an established questionnaire or screening tool of the injured employee's potential risk for opioid or alcohol abuse, as well as other psychosocial factors that contribute to abuse risk, at the initiation of the informed consent process, and a plan for the ongoing assessment of risk thereafter;

(6) Consent to urine drug screening at the initiation of the informed consent process and at least two times each year thereafter;

(7) Consent to be referred to a psychologist or psychiatrist for concurrent care or consultation if the opioid therapy continues for longer than six months; and

(8) Confirmation that the electronic prescription accountability system has been checked at the initiation of the informed consent process and agreement that the system will be checked at least quarterly thereafter."

SECTION 3. Section 386-21.7, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~] §386-21.7 [~~Prescription drugs; pharmaceuticals.~~] **Prescription drugs; pharmaceuticals.** (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 [~~.~~] ; except that physician-dispensed prescription drugs shall only be provided during the first days from the date of injury. The liability for the prescription drugs shall be subject to the deductible under section 386-100.

(b) Payment for all forms of prescription drugs including repackaged and relabeled drugs shall be one hundred [~~forty~~] one 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 dispensing, 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.

(c) Payment for compounded prescription drugs shall be the sum of one hundred [~~forty~~] one per cent of the average wholesale price by gram weight of each underlying prescription drug

contained in the compounded prescription drug. For compounded prescription drugs, 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 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. In no instance shall the prescription supply be for more than thirty days, nor shall payment exceed $1,000 in a thirty-day period. All compounded medications shall be billed on a single bill and shall be billed at the ingredient level with a separate line item for each ingredient and the corresponding gram weight and cost per ingredient. Any ingredient used in a compound shall be billed with the National Drug Code and as published in the Red Book: Pharmacy's Fundamental Reference of the original drug. Any ingredient in a topical compound shall be Food and Drug Administration-approved for topical use in order to be reimbursable.

(d) All pharmaceutical claims submitted for repackaged, relabeled, or compounded prescription drugs shall include the

National Drug Code of the original manufacturer. [~~If the original manufacturer of the underlying drug product used in repackaged, relabeled, or compounded prescription drugs is not provided or is unknown, then reimbursement shall be 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 that is most closely related to the underlying drug product.~~]

(e) Reimbursement for any drug under schedule II of chapter 329, the uniform controlled substances act, that is prescribed by a physician to an injured employee shall be limited to reimbursement for an initial seven-day supply, commencing upon the first visit with that physician; provided that the injured employee and physician shall engage in an informed consent process pursuant to section 386- prior to the injured employee being prescribed opioids.

[~~(e)~~] (f) Notwithstanding any other provision in this section to the contrary, equivalent generic drug products 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 an equivalent generic drug product.

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

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

SECTION 5. This Act shall take effect on July 1, 2050.

H.B. NO. 1181 H.D. 2 S.D. 1

Report Title:
Workers' Compensation; Prescription Drugs; Opioids; Informed Consent; Reimbursement; Limitation

Description:
Requires an opioid therapy informed consent process agreement to be executed between an injured employee and any prescriber of opioids under certain conditions. Requires the harm reduction services branch of the department of health to develop and make available a template of an opioid therapy informed consent process agreement and advise the department of labor and industrial relations on the contents of the agreement. Restricts the provision of physician-dispensed prescription drugs to an unspecified time following injury. Specifies that the reimbursement rate for prescription drugs in the workers' compensation system shall be one hundred and one percent of the average wholesale price. Restricts the provision of physician-dispensed prescription drugs to a specified time following injury. Specifies that reimbursements for any schedule II drug under the Uniform Controlled Substances Act prescribed by a physician shall be limited to an initial seven-day supply. Effective 7/1/2050. (SD1)

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