

JAN 20 2017

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# A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION.

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

1           SECTION 1. The purpose of this Act is to amend Act 231,  
2 Session Laws of 2014, which enacted a new section of law to  
3 curtail the alarming cost increases in prescription drugs and  
4 compounds authorized for reimbursement under the State's  
5 workers' compensation law. Since the law was enacted, further  
6 analysis of other states shows that, of the thirty-seven states  
7 that reimburse prescription drugs on the basis of a percentage  
8 of average wholesale price, the reimbursement range is great.  
9 Of note, Hawaii has the highest reimbursement rate for brand  
10 name and generic drugs, at average wholesale price plus forty  
11 per cent. The next highest state is Louisiana, at average  
12 wholesale price plus ten per cent with a \$10.51 dispensing fee  
13 for brand name drugs. The national average for brand name drugs  
14 is average wholesale price minus three per cent, with a \$4.32  
15 dispensing fee, and for generic drugs, the national average is  
16 minus four per cent, with a \$4.94 dispensing fee. More  
17 specifically, California reimburses at a rate of minus seventeen



1 per cent with a \$7.25 dispensing fee for both brand name and  
2 generic drugs. Oregon reimburses at a rate of minus 16.5 per  
3 cent with a \$2.00 dispensing fee for both brand name and generic  
4 drugs. Both these states are considered progressive workers'  
5 compensation states and have worked on their systems  
6 extensively.

7 The purpose of this Act is to bring Hawaii closer to the  
8 rest of the nation in terms of its reimbursement for  
9 prescription drugs and compounds.

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

12 "[+]§386-21.7[+] Prescription drugs; pharmaceuticals. (a)  
13 Notwithstanding any other provision to the contrary, immediately  
14 after a work injury is sustained by an employee and so long as  
15 reasonably needed, the employer shall furnish to the employee  
16 all prescription drugs as the nature of the injury requires.  
17 The liability for the prescription drugs shall be subject to the  
18 deductible under section 386-100.

19 (b) Payment for all forms of prescription drugs including  
20 repackaged and relabeled drugs shall be [~~one hundred forty~~]  
21 minus ten per cent of the average wholesale price set by the



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

7 (c) Payment for compounded prescription drugs shall be the  
8 sum of [~~one hundred forty~~] minus ten per cent of the average  
9 wholesale price by gram weight of each underlying prescription  
10 drug contained in the compounded prescription drug. For  
11 compounded prescription drugs, the average wholesale price shall  
12 be that set by the original manufacturer of the underlying  
13 prescription drug as identified by its National Drug Code and as  
14 published in the Red Book: Pharmacy's Fundamental Reference as  
15 of the date of compounding, except where the employer or  
16 carrier, or any entity acting on behalf of the employer or  
17 carrier, directly contracts with the provider or provider's  
18 assignee for a lower amount.

19 (d) All pharmaceutical claims submitted for repackaged,  
20 relabeled, or compounded prescription drugs shall include the  
21 National Drug Code of the original manufacturer. If the



1 original manufacturer of the underlying drug product used in  
2 repackaged, relabeled, or compounded prescription drugs is not  
3 provided or is unknown, then reimbursement shall be [~~one hundred~~  
4 ~~forty~~] minus ten per cent of the average wholesale price for the  
5 original manufacturer's National Drug Code number as listed in  
6 the Red Book: Pharmacy's Fundamental Reference of the  
7 prescription drug that is most closely related to the underlying  
8 drug product.

9 (e) Notwithstanding any other provision in this section to  
10 the contrary, equivalent generic drug products shall be  
11 substituted for brand name pharmaceuticals unless the  
12 prescribing physician certifies that no substitution shall be  
13 prescribed because the injured employee's condition does not  
14 tolerate an equivalent generic drug product.

15 (f) Physician dispensed prescription drugs may only be  
16 prescribed during the first ninety days from the date of injury.

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

20 SECTION 3. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.



# S.B. NO. 338

1 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: ~~SEN. D.C. RICH AGAN~~



# S.B. NO. 338

**Report Title:**

Workers' Compensation; Prescription Drugs

**Description:**

Adjusts the payment for workers' compensation prescription drugs from 140% to -10% of the average wholesale price.

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

