

## ACT 205

H.B. NO. 2774

A Bill for an Act Relating to Human Services:

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

## PART I

SECTION 1. The number of individuals who require treatment for mental health issues is growing. Prescription medications such as psychotropic drugs have become increasingly expensive and are not always effective for every patient. With the current difficult economic climate, alternatives must be explored to implement cost-saving measures while preserving an appropriate level of care. While the legislature finds that patients should have access to necessary medication, the medication should also be monitored for effectiveness, and the possibility of using generic medications should be explored.

SECTION 2. Section 346-59.9, Hawaii Revised Statutes, is amended to read as follows:

**“§346-59.9 Psychotropic medication. (a) This section shall apply only to the QUEST, QUEST Expanded Access, and fee-for-service programs administered by the department when the department or the department’s contracted health plan is the primary insurer. When the department is the secondary insurer, the department and its contracted health plans shall be responsible only for the secondary insurer’s share of any psychotropic medication covered by the primary insurer.**

[(a)] (b) The department and its contracted health plans shall not impose any restriction or limitation on the coverage for, or a recipient's access to, [psychotropic medication; provided that the psychotropic medication shall be prescribed by a psychiatrist, physician, or an advanced practice registered nurse with prescriptive authority under chapter 457, duly licensed in the State.] antipsychotic medication.

(c) The department and its contracted health plans shall not impose any restriction or limitation on the coverage for, or a recipient's access to, antidepressant medication other than:

- (1) Requiring that an individual must have two failed attempts on a generic antidepressant medication to receive coverage for a new brand-name antidepressant prescription; and
- (2) Requiring that if an individual does not have two failed attempts on a generic antidepressant medication, that individual shall receive coverage for a brand-name antidepressant medication with prior authorization by the contracted health plan; provided that while a prior authorization request for a brand-name antidepressant medication submitted by the prescriber is pending, a supply of the prescribed medication sufficient to last until the request is resolved shall be covered if requested by the prescriber.

For purposes of this subsection, a "failed attempt" means that the prescribed generic antidepressant medication up to the maximum FDA-approved dosage is not effective in treating the individual, or the individual's compliance is compromised due to the side effects caused by the medication.

(d) The department and its contracted health plans shall not impose any restriction or limitation on the coverage for, or a recipient's access to, anti-anxiety medication other than:

- (1) Requiring that an individual must have two failed attempts on a generic anti-anxiety medication to receive coverage for a new brand-name anti-anxiety prescription; and
- (2) Requiring that if an individual does not have two failed attempts on a generic anti-anxiety medication, that individual shall receive coverage for a brand-name anti-anxiety medication with prior authorization by the contracted health plan; provided that while a prior authorization request for a brand-name anti-anxiety medication submitted by the prescriber is pending, a supply of the prescribed medication sufficient to last until the request is resolved shall be covered if requested by the prescriber.

For purposes of this subsection, a "failed attempt" means that the prescribed generic anti-anxiety medication up to the maximum FDA-approved dosage is not effective in treating the individual, or the individual's compliance is compromised due to the side effects caused by the medication.

(e) The department and its contracted health plans shall not require any individual stable on a brand-name antidepressant medication on or before July 1, 2010, to transfer to a different antidepressant medication, generic or brand-name, unless the individual's condition becomes unstable and requires the medication to be replaced.

(f) The department and its contracted health plans shall not require any individual stable on a brand-name anti-anxiety medication on or before July 1, 2010, to transfer to a different anti-anxiety medication, generic or brand-name, unless the individual's condition becomes unstable and requires the medication to be replaced.

(g) The department and its QUEST contracted health plans shall have the authority to investigate fraud, abuse, or misconduct.

~~[(b)]~~ (h) The department shall report to the legislature no later than twenty days before the convening of each regular session on:

- (1) The number of brand-name and generic prescriptions written ~~[pursuant to this section;]~~ to which this section applies; and
- (2) The ~~[cost and impact of psychiatrists, physicians, or advanced practice nurses prescribing medications, pursuant to this section, that are not part of the existing formulary; and~~
- (3) ~~The overall use of psychotropic medication under chapter 346.]~~ amount expended on brand-name prescriptions and the amount expended on generic prescriptions written each fiscal year to which this section applies.

(i) All psychotropic medications covered by this section shall be prescribed by a psychiatrist, a physician, or an advanced practice registered nurse with prescriptive authority under chapter 457 and duly licensed in the state.

~~[(e)]~~ (j) As used in this section[, “psychotropic”]:

“Anti-anxiety medication” means those medications included in the United States Pharmacopeia’s anxiolytic therapeutic category.

“Antidepressant medication” means those medications included in the United States Pharmacopeia’s antidepressant therapeutic category.

“Antipsychotic medication” means those medications included in the United States Pharmacopeia’s antipsychotic therapeutic category.

“Psychotropic medication” means only [those agents] antipsychotic, antidepressant, or anti-anxiety medications approved by the United States Food and Drug Administration for the treatment of mental or emotional disorders.”

SECTION 3. The department of human services, in conjunction with health care providers, health care plans, and mental health advocates, shall submit a report detailing the status of the implementation of part I of this Act, including the numbers of persons that use each type of coverage provided therein, to the legislature no later than twenty days prior to the convening of the regular session of 2011.

## PART II

SECTION 4. The department of human services currently provides certain death benefits for individuals who were medical assistance or financial assistance recipients at the time of death. The legislature finds it appropriate for the department of human services to issue a death benefit amount equivalent to the Social Security Administration’s one-time lump-sum death benefit if the deceased individual is ineligible for the Social Security Administration’s one-time lump-sum death benefit, and to bear a larger cost for certain services for unclaimed corpses, if necessary.

SECTION 5. Section 346-15, Hawaii Revised Statutes, is amended to read as follows:

**“§346-15 ~~[Burial of] Death benefits for deceased medical or financial assistance recipients [or] and disposition of unclaimed corpses.~~** (a) ~~[The] Where the decedent was a medical assistance or financial assistance recipient at the time of death and is ineligible for the Social Security Administration’s one-time lump-sum death benefit, the department [of human services] may [bear the cost of the burial of deceased medical or financial assistance recipients or unclaimed corpses. Burial services include the customary mortuary, crematory, cemetery, and other services essential in providing a dignified burial.] issue a lump-sum~~

death benefit in an amount equal to the Social Security Administration's one-time lump-sum death benefit for the year in which the recipient died.

~~(b) [The department may pay for mortuary and crematory services to be furnished by any licensed provider of mortuary and crematory services. Mortuary and crematory payments shall be made to the extent of cost, or in the sum of \$400, whichever is less.] The department may authorize and bear the cost of the mortuary and crematory services for unclaimed corpses furnished by any licensed provider of mortuary or crematory services. Payments for mortuary and crematory services shall be made to the extent of the cost, or in the sum of \$800 in total, whichever is less, for each unclaimed corpse.~~

~~[(c) The department may pay for cemetery services, to be furnished by any licensed provider of cemetery services. Cemetery payments shall be made to the extent of cost, or in the sum of \$400, whichever is less.~~

~~(d) In cases where the decedent is survived by relatives, the relatives shall be permitted to make their own arrangements for the burial or cremation of their deceased relative.~~

~~(e) The person submitting an application for funeral payments under the department's funeral payment program,]~~

(c) Any person submitting an application for the lump-sum death benefit described in subsection (a), on behalf of a deceased medical or financial assistance recipient, shall have sixty days from the date of the death of the deceased to submit the application [for funeral payments] to the department. [This subsection shall not apply to applications submitted by the respective county medical examiner or coroner on behalf of unclaimed corpses.

~~(f) All unclaimed corpses shall be cremated. The department of human services shall authorize the cremation of unclaimed corpses.~~

~~(g) [(d) A person or public or private agency, including the department [of human services], shall not be liable for any damage or subject to criminal prosecution for any act done pursuant to and in compliance with this section.~~

~~[(h) (e) For the purposes of this section, "unclaimed corpse" means the remains of any deceased person for whom no one has assumed responsibility for disposition of the body within five working days, excluding weekends, from the date of death and about whom the department and the respective county medical examiner or coroner have no actual knowledge of a legally responsible party.~~

~~[(i) (f) The department shall adopt rules pursuant to chapter 91 for purposes of administering and implementing this section."~~

### PART III

SECTION 6. The department of human services is prohibited from expending any moneys from the Medicaid budget on purposes or programs that have not been explicitly authorized by the legislature. Moneys appropriated for Medicaid programs may not be transferred, shifted, moved, changed, or spent on any programs other than programs directly related to Medicaid or programs specifically appropriated for by the legislature; provided that for nine months beginning on May 1, 2010, the department of human services may expend up to \$5,000,000 for the Hawaii premium plus program created by the department under section 17-1709.2, Hawaii Administrative Rules.

### PART IV

SECTION 7. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other

provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

**SECTION 8.** Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

**SECTION 9.** This Act shall take effect on July 1, 2010; provided that on June 30, 2012, this Act shall be repealed and sections 346-15 and 346-59.9, Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day prior to the effective date of this Act; and provided further that section 6 of this Act shall take effect retroactive to May 1, 2010.

(Became law on July 6, 2010, without the governor's signature, pursuant to Art. III, §16, State Constitution.)