

## ACT 231

S.B. NO. 2365

A Bill for an Act Relating to Insurance Claims.

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

SECTION 1. The legislature finds that Hawaii's existing reimbursement rates for pharmaceuticals in workers' compensation and motor vehicle claims are among the highest in the nation for both brand name and generic products. The legislature further finds that regulating the pricing of prescription medications will help control the cost of prescription and compounded prescription drugs in the State's workers' compensation and motor vehicle insurance systems.

The legislature additionally finds that motor vehicle personal injury protection charges follow the workers' compensation medical fee schedule. Motor vehicle insurance benefits should automatically adopt the drug pricing protections afforded by this Act unless otherwise modified by the insurance commissioner through rulemaking authority subsequent to the enactment of this Act.

Accordingly, the purpose of this Act is to limit reimbursement of prescription medications in order to prevent drug prices from becoming an unreasonable cost driver of health care in workers' compensation and motor vehicle insurance claims, while ensuring the same standard of service and care intended for both injured employees under the workers' compensation law and injured individuals under the motor vehicle insurance law. This Act does not restrict and is not intended to restrict the ability of any physician, hospital, pharmacy, or provider of service other than a physician to dispense, bill for, and receive payment for prescription drugs that are reasonably needed as the nature of the injury requires.

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

**“§386- 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. 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 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 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.

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

SECTION 3. Section 431:10C-308.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The charges and frequency of treatment for services specified in section 431:10C-103.5(a), except for emergency services provided within seventy-two hours following a motor vehicle accident resulting in injury, shall not exceed the charges and frequency of treatment permissible under the workers' compensation supplemental medical fee schedule. Charges for independent medical examinations, including record reviews, physical examinations, history taking, and reports, to be conducted by a licensed Hawaii provider unless the insured consents to an out-of-state provider, shall not exceed the charges permissible under the appropriate codes in the workers' compensation supplemental medical fee schedule. The workers' compensation supplemental medical fee schedule shall not apply to independent medical examinations conducted by out-of-state providers if the charges for the examination are reasonable. The independent medical examiner shall be selected by mutual agreement between the insurer and claimant; provided that if no agreement is reached, the selection may be submitted to the commissioner, arbitration or circuit court. The independent medical examiner shall be of the same specialty as the provider whose treatment is being

reviewed, unless otherwise agreed by the insurer and claimant. All records and charges relating to an independent medical examination shall be made available to the claimant upon request. The commissioner may adopt administrative rules relating to fees or frequency of treatment for injuries covered by personal injury protection benefits. If adopted, these administrative rules shall prevail to the extent that they are inconsistent with the workers' compensation supplemental medical fee ~~schedule~~; provided that the fees set forth in the administrative rules adopted by the commissioner shall not exceed the charges permissible under sections 386-21 and 386- ."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect on July 1, 2014.

(Became law on July 8, 2014, without the governor's signature, pursuant to Art. III, §16, State Constitution.)

**Note**

1. Edited pursuant to HRS §23G-16.5.