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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 section  
2 386-21.7, Hawaii Revised Statutes, which was enacted to curtail  
3 the alarming cost increases of prescription drugs and compounds  
4 under workers' compensation law. The legislature finds that  
5 since that section was enacted, analysis of other states shows a  
6 wide range of reimbursement rates among the thirty-seven states  
7 that reimburse prescription drugs on the basis of a percentage  
8 of average wholesale price. Hawaii has the highest rate of  
9 reimbursement for brand name and generic drugs at one hundred  
10 forty per cent of the average wholesale price. The next highest  
11 rate is in Louisiana at one hundred ten per cent of the average  
12 wholesale price and a \$10.51 dispensing fee for brand name  
13 drugs. The national average for brand name drugs is average  
14 wholesale price minus three per cent with a \$4.32 dispensing fee  
15 and for generic drugs, average wholesale price minus four per  
16 cent with a \$4.94 dispensing fee. For both brand name and  
17 generics drugs, California reimburses at average wholesale price



1 minus seventeen per cent with a \$7.25 dispensing fee, and Oregon  
2 reimburses at average wholesale price minus 16.5 per cent with a  
3 \$2.00 dispensing fee. California and Oregon are considered  
4 progressive workers' compensation states and have worked  
5 extensively on their systems. This Act is intended to bring  
6 Hawaii closer to the rest of the nation in terms of its  
7 reimbursement rate for prescription drugs and compounds under  
8 the workers' compensation law.

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

11 " ~~[§]~~ §386-21.7 ~~[§]~~ Prescription drugs; pharmaceuticals. (a)  
12 Notwithstanding any other provision to the contrary, immediately  
13 after a work injury is sustained by an employee and so long as  
14 reasonably needed, the employer shall furnish to the employee  
15 all prescription drugs as the nature of the injury requires.  
16 The liability for the prescription drugs shall be subject to the  
17 deductible under section 386-100.

18 (b) Payment for all forms of prescription drugs including  
19 repackaged and relabeled drugs shall be ~~[one hundred forty]~~  
20 ninety per cent of the average wholesale price set by the  
21 original manufacturer of the dispensed prescription drug as



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

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

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



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

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

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

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

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

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

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INTRODUCED BY:

*[Handwritten Signature]*

JAN 20 2017



# H.B. NO. 705

**Report Title:**

Workers' Compensation; Prescription Drugs; Average Wholesale Price

**Description:**

Reduces repackaged, relabeled, and compounded prescription drug payments under workers' compensation from 140% to 90% of the average wholesale price. Requires physician dispensed prescription drugs to only be prescribed within 90 days of the injury.

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