RELATING TO WORKERS' COMPENSATION.

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

SECTION 1. The legislature finds that, among other things, Act 230, Session Laws of Hawaii 2016, established a legislative oversight working group to develop and recommend legislation to improve the medical cannabis dispensary system in the State to ensure safe and legal access to medical cannabis for qualifying patients. The working group was tasked with addressing issues related to the medical cannabis dispensary program in the State, including operations, edibles, and any issues the working group found relevant to the medical cannabis dispensary program.

The legislature further finds that one of the topics considered by the working group was the potential for medical cannabis to be reimbursable via health insurance and workers' compensation. However, because the issues surrounding the topic of insurance reimbursement for medical cannabis are extremely complex, the legislature concluded that it was prudent to establish a separate working group specifically tasked with addressing this topic.
Such a working group was convened pursuant to Act 161, Session Laws of 2018, which included stakeholders from the medical cannabis patient community, medical cannabis dispensary licensees, a mutual benefit society, a health maintenance organization, and a medicaid managed care plan. The legislature finds that the working group established in its final report from December 2018, that workers' compensation reimbursement of medical cannabis was being enacted in other states through legislation, court rulings, and administrative agency decisions. Additionally, the legislature finds that injured workers compelled to rely on this form of medicine as the only effective relief for their suffering, may accumulate expenses in the thousands of dollars per year.

Accordingly, the purpose of this Act is to make medical cannabis reimbursable via the workers' compensation system in certain circumstances for patients registered with the department of health's medical cannabis program.

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

"§386-21.7 Prescription drugs; medical cannabis; 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, or medical cannabis produced and sold pursuant to chapter 329D, as the nature of the injury requires; provided that initial concurrent prescriptions for opioids and benzodiazepines shall meet the requirements of section 386-29. The liability for the prescription drugs, or medical cannabis, 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) Reimbursement for medical cannabis shall be subject to
the following conditions:

(1) The maximum reimbursement for medical cannabis shall
be determined by the method and amount set forth in
the health care provider fee schedule;

(2) Medical cannabis may be reasonable and necessary
medical treatment only where an authorized health care
provider certifies that the potential benefits of the
medical use of cannabis would likely outweigh the
health risks to the worker and has explained the
potential risks and benefits of the medical use of
cannabis to the worker;
(3) At least one physician certifying the worker for participation in the medical cannabis program, provided for in chapter 329, part IX, shall be an authorized health care provider;

(4) The worker must be enrolled in the medical cannabis program pursuant to chapter 329, part IX, and provide proof of enrollment and qualifying condition prior to the date of purchase of medical cannabis to be eligible for reimbursement; and

(5) The worker shall be reimbursed upon the following conditions:

(A) Only the worker shall be reimbursed for the out of pocket cost of the medical cannabis;

(B) The worker shall submit an itemized receipt issued by a licensed producer under chapter 329D; provided that the receipt includes the name and address of the licensed producer and the worker, the date of purchase, the quantity in grams of dry weight, the form of medical cannabis purchased, and the purchase price;
(C) The worker shall be reimbursed no more than the
maximum set forth in the fee schedule;

(D) Reimbursement shall be limited to the quantity
set for in the fee schedule;

(E) Reimbursement for paraphernalia, as defined in
the Controlled Substances Act, shall not be made,
with the exception of "pre-filled and sealed
containers" and "devices that provide safe
pulmonary administration" of manufactured
cannabis products as listed in section 329D-10;

and

(F) Reimbursement shall not be allowed for expenses
related to personal production or cannabis
acquired from sources other than a licensed
producer.

[e+e] (e) 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.

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.

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

SECTION 3. Section 329-124, Hawaii Revised Statutes, is amended to read as follows:

"[]§329-124[] Insurance not applicable. This part shall not be construed to require insurance coverage for the medical use of cannabis[<], except as provided in chapter 386."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.
SECTION 5. This Act shall take effect upon its approval.

INTRODUCED BY: ________________________

JAN 24 2019
Report Title:
Workers' Compensation; Medical Cannabis; Reimbursement

Description:
Requires that workers registered with the department of health's medical cannabis program be reimbursed for the out of pocket cost of medical cannabis through the workers' compensation system in certain circumstances.

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