



EXECUTIVE CHAMBERS  
HONOLULU

NEIL ABERCROMBIE  
GOVERNOR

July 8, 2014

**GOV. MSG. NO. 1341**

The Honorable Donna Mercado Kim,  
President and Members  
of the Senate  
Twenty-Seventh State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

The Honorable Joseph M. Souki,  
Speaker and Members of  
the House of Representatives  
Twenty-Seventh State Legislature  
State Capitol, Room 431  
Honolulu, Hawaii 96813

Dear President Kim, Speaker Souki, and Members of the Legislature:

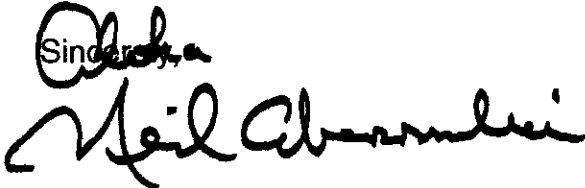
Re: SB2365 SD2 HD2 CD1

SB2365 SD2 HD2 CD1, entitled "A BILL FOR AN ACT RELATING TO INSURANCE CLAIMS" will become law without my signature, pursuant to Section 16 of Article III of the State Constitution.

This measure limits the reimbursement of prescription medications in workers' compensation and motor vehicle claims. The end result should not only reduce the cost for medical care related to these claims but also reduce the number of billing disputes for workers' compensation claims.

While I am in full support of the cost containment measures provided in this legislation, I have issues regarding the ethics of doctors prescribing and then selling prescription drugs to their own patients. Part of the reason for the need for cost containment legislation is that doctors are prescribing and selling drugs to their own patients. That aspect needs to be addressed in the future by the Legislature.

For the foregoing reasons, SB2365 SD2 HD2 CD1 will become law as Act 231, Session Laws of Hawaii 2014, effective July 8, 2014, without my signature.

Sincerely,  


NEIL ABERCROMBIE  
Governor, State of Hawaii

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# A BILL FOR AN ACT

RELATING TO INSURANCE CLAIMS.

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

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

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

16 Accordingly, the purpose of this Act is to limit  
17 reimbursement of prescription medications in order to prevent  
18 drug prices from becoming an unreasonable cost driver of health



1 care in workers' compensation and motor vehicle insurance  
2 claims, while ensuring the same standard of service and care  
3 intended for both injured employees under the workers'  
4 compensation law and injured individuals under the motor vehicle  
5 insurance law. This Act does not restrict and is not intended  
6 to restrict the ability of any physician, hospital, pharmacy, or  
7 provider of service other than a physician to dispense, bill  
8 for, and receive payment for prescription drugs that are  
9 reasonably needed as the nature of the injury requires.

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

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

20 (b) Payment for all forms of prescription drugs including  
21 repackaged and relabeled drugs shall be one hundred forty per  
22 cent of the average wholesale price set by the original



1 manufacturer of the dispensed prescription drug as identified by  
2 its National Drug Code and as published in the Red Book:  
3 Pharmacy's Fundamental Reference as of the date of dispensing,  
4 except where the employer or carrier, or any entity acting on  
5 behalf of the employer or carrier, directly contracts with the  
6 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 per cent of the average wholesale price  
9 by gram weight of each underlying prescription drug contained in  
10 the compounded prescription drug. For compounded prescription  
11 drugs, the average wholesale price shall be that set by the  
12 original manufacturer of the underlying prescription drug as  
13 identified by its National Drug Code and as published in the Red  
14 Book: Pharmacy's Fundamental Reference as of the date of  
15 compounding, except where the employer or carrier, or any entity  
16 acting on behalf of the employer or carrier, directly contracts  
17 with the provider or provider's assignee for a lower amount.

18 (d) All pharmaceutical claims submitted for repackaged,  
19 re-labeled, 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  
22 repackaged, relabeled, or compounded prescription drugs is not



1 provided or is unknown, then reimbursement shall be one hundred  
2 forty per cent of the average wholesale price for the original  
3 manufacturer's National Drug Code number as listed in the Red  
4 Book: Pharmacy's Fundamental Reference of the prescription drug  
5 that is most closely related to the underlying drug product.

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

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

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

16 "(b) The charges and frequency of treatment for services  
17 specified in section 431:10C-103.5(a), except for emergency  
18 services provided within seventy-two hours following a motor  
19 vehicle accident resulting in injury, shall not exceed the  
20 charges and frequency of treatment permissible under the  
21 workers' compensation supplemental medical fee schedule.

22 Charges for independent medical examinations, including record



1 reviews, physical examinations, history taking, and reports, to  
2 be conducted by a licensed Hawaii provider unless the insured  
3 consents to an out-of-state provider, shall not exceed the  
4 charges permissible under the appropriate codes in the workers'  
5 compensation supplemental medical fee schedule. The workers'  
6 compensation supplemental medical fee schedule shall not apply  
7 to independent medical examinations conducted by out-of-state  
8 providers if the charges for the examination are reasonable.  
9 The independent medical examiner shall be selected by mutual  
10 agreement between the insurer and claimant; provided that if no  
11 agreement is reached, the selection may be submitted to the  
12 commissioner, arbitration or circuit court. The independent  
13 medical examiner shall be of the same specialty as the provider  
14 whose treatment is being reviewed, unless otherwise agreed by  
15 the insurer and claimant. All records and charges relating to  
16 an independent medical examination shall be made available to  
17 the claimant upon request. The commissioner may adopt  
18 administrative rules relating to fees or frequency of treatment  
19 for injuries covered by personal injury protection benefits. If  
20 adopted, these administrative rules shall prevail to the extent  
21 that they are inconsistent with the workers' compensation  
22 supplemental medical fee schedule[-]; provided that the fees set



1 forth in the administrative rules adopted by the commissioner  
2 shall not exceed the charges permissible under sections 386-21  
3 and 386- ."

4 SECTION 4. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

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

APPROVED this                      day of                      , 2014

GOVERNOR OF THE STATE OF HAWAII