


STATE OF HAWAII
INSURANCE DIVISION
DEPARTMENT OF COMMERCE & CONSUMER AFFAIRS
P. O. BOX 3614
HONOLULU, HAWAII 96811-3614
335 MERCHANT STREET, ROOM 213
HONOLULU, HAWAII 96813
PHONE NO: (808) 586-2790
FAX NO: (808) 586-2806
cca.hawaii.gov/ins

MEMORANDUM 2014-2L

DATE: September 22, 2014

TO: All Motor Vehicle Insurance Companies

FROM: Gordon I. Ito, Insurance Commissioner 

RE: Personal Injury Protection Benefits – Payment of General Excise Tax

Memorandum 2014- 2L is a further clarification of Commissioner's Memorandum 2008-6A, which cited to the Commissioner's ruling in Khaw v. Allstate Ins. Co., ATX-2007-5-P (Oct. 16, 2008), that insurers shall pay providers of personal injury protection ("PIP") benefits up to the full amount of the workers' compensation supplemental medical fee schedule for services plus the applicable general excise tax ("GET"), subject to the aggregate PIP limit.¹ The purpose of this Memorandum is to clarify how the GET is to be applied to the chiropractic, acupuncture, and naturopathic ("CAN") individual treatment cap.²

Hawaii Revised Statutes ("HRS") § 431:10C-308.5 incorporates the workers' compensation schedule, as adopted by the Director of Labor and Industrial Relations for workers compensation cases under chapter 386, HRS, in establishing the fees and frequency of treatments by providers of PIP benefits in motor vehicle cases.³ The workers' compensation fee schedule is

¹ See HRS § 431:10C-103.5(c), which provides: "[p]ersonal injury protection benefits shall be subject to an aggregate limit of \$10,000 per person for services provided under this section. An insurer may offer additional coverage in excess of the \$10,000 aggregate limit for services provided under this section, or as provided by rule of the commissioner." As well as addressing the application of the GET to the chiropractic, acupuncture, and naturopathic individual treatment cap, this memorandum clarifies that the GET is included within the aggregate PIP limit.

² See HRS § 431:10C-103.6(b) through (e).

³ HRS § 431:10C-308.5 provides in part as follows: "**§431:10C-308.5 Limitation on charges.** (a) As used in this article, the term "workers' compensation supplemental medical fee schedule" means the schedule adopted and as may be amended by the director of labor and industrial relations for workers' compensation cases under chapter 386, establishing fees and frequency of treatment guidelines. References in the workers' compensation supplemental medical fee schedule to "the employer", "the director", and "the industrial injury", shall be respectively construed as references to "the insurer", "the commissioner", and "the injury covered by personal injury protection benefits" for purposes of this article.

the entire set of rules relating to permissible fees and frequency found within Hawaii Administrative Rules (“HAR”) Title 12, Chapter 15. Subject to the provisions of HRS §§ 431:10C-103.6(b) through (e) relating to CAN treatments, all rules regarding fees and frequency of treatment within HAR Title 12, Chapter 15, are applicable to services relating to PIP services under the motor vehicle code.

HAR § 12-15-90(e) specifically allows for payment of the GET to providers as follows: “[p]roviders of services will be allowed to add the applicable Hawaii general excise tax to their billing.” As this rule is incorporated and adopted within the motor vehicle insurance law pursuant to HRS § 431:10C-308.5, providers of PIP services shall be entitled to bill the insurer for any applicable excise tax, in addition to the maximum amount for specified services in the motor vehicle code or rules. Therefore, the CAN treatment cap of \$75 per visit does not include the GET, even if this cap is specified in an insurance policy as a “per visit” policy limit, and the GET should be paid on top of the individual CAN treatment cap. The payment of GET to providers of PIP services, however, shall not affect the aggregate PIP limit of \$10,000 per person for services⁴, or any other policy limit. Once the aggregate PIP limit, inclusive of the GET, is paid to a claimant, PIP benefits for that claimant will be exhausted.

If you have any questions, please contact Martha C. Im at (808) 586-2790.

(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”

⁴ See § 431:10C-103.5(c), which provides “[p]ersonal injury protection benefits shall be subject to an aggregate limit of \$10,000 per person for services provided under this section. An insurer may offer additional coverage in excess of the \$10,000 aggregate limit for services provided under this section, or as provided by rule of the commissioner.”