NEIL ABERCROMBIE
GOVERNOR

SHAN S. TSUTSUI
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
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KEALI`I S. LOPEZ
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JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

TO THE HOUSE COMMITTEE ON FINANCE

TWENTY-SEVENTH LEGISLATURE
Regular Session of 2014

Thursday, March 27, 2014
3:00 p.m.

TESTIMONY ON SENATE BILL NO. 2365, S.D. 2, H.D. 2 – RELATING TO INSURANCE CLAIMS.

TO THE HONORABLE SYLVIA LUKE, CHAIR, AND MEMBERS OF THE COMMITTEE:

My name is Gordon Ito, State Insurance Commissioner ("Commissioner"), testifying on behalf of the Department of Commerce and Consumer Affairs ("Department"). The Department supports the intent of this bill, and submits the following comments:

This bill seeks to limit reimbursement for prescription drugs and compound medications in the fee schedule that governs both the State workers' compensation and motor vehicle insurance systems.

The Department recognizes that the Worker's Compensation Medical Fee Schedule allows drugs to be charged to insurers at up to 140% of the average wholesale price ("AWP") listed in the Red Book. This has encouraged third parties to buy drugs in bulk, repackage and/or compound them, add a new national drug code (NDC) to them with a higher AWP, and then bill the insurers 140% of the higher AWP. This drives up the cost of health care.

The Department supports clarification of reimbursement rates for repackaged, relabeled, and compounded medications, which are not now addressed in workers' compensation rules and regulations.

In addition, we would request a simple amendment to Hawaii Revised Statutes ("HRS") § 431:10C-308.5, which section 3 of House Draft 2 is currently amending, by deleting the word "supplemental" wherever it appears. HRS § 431:10C-308.5(b) limits charges for fees and frequency of treatment in motor vehicle cases to those established and permitted for workers' compensation cases, referencing the workers' compensation medical fee schedule.

HRS § 431:10C-308.5 uses the term "workers' compensation supplemental medical fee schedule" to refer to the workers' compensation medical fee schedule. As used, the term "workers' compensation supplemental medical fee schedule" may create confusion as to whether it refers to the entire workers' compensation rules and schedule or only the fee payment schedule. The workers' compensation rules are entitled "Workers' Compensation Medical Fee Schedule." Exhibit A of the workers' compensation medical fee schedule rules lists the applicable rates for various treatment procedures and is entitled "Workers' Compensation Supplemental Medical Fee Schedule."

HRS § 431:10C-308.5 includes all of the workers' compensation rules and schedules. The language in subsection (a) substitutes specific terms in the workers' compensation medical fee schedule to ensure that the rules and schedule apply to the Motor Vehicle Code. HRS § 431:10C-308.5(a) states:

> (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.

Replacing the word “supplemental” with the term “workers’ compensation medical fee schedule” throughout HRS § 431:10C-308.5 would reconcile the definition of workers’ compensation fee schedule in the Motor Vehicle Code with the workers’ compensation fee schedule adopted and amended by the director of the department of labor and industrial relations.

The Insurance Division respectfully urges the Chair and members of the committee to simply remove the word “supplemental” in HRS § 431:10C-308.5 from the term “workers’ compensation supplemental medical fee schedule.”

If the Chair and committee are inclined to make this change, we would also seek an amendment to HRS § 431:10C-304(6) that replaces the term “workers’ compensation supplemental medical fee schedule” with the phrase “workers’ compensation medical fee schedule.”

Redlined copies of HRS §§ 431:10C-308.5 and 431:10C-304(6) are attached for your reference.

We thank the Committee for the opportunity to present testimony on this matter.

§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.

(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.

(c) Charges for services for which no fee is set by the workers' compensation [~~supplemental~~] medical fee schedule or other administrative rules adopted by the commissioner shall be limited to eighty per cent of the provider's usual and customary charges for these services.

(d) Services for which no frequency of treatment guidelines are set forth in the workers' compensation [~~supplemental~~] medical fee schedule or other administrative rules adopted by the commissioner shall be deemed appropriate and reasonable expenses necessarily incurred if so determined by a provider.

(e) In the event of a dispute between the provider and the insurer over the amount of a charge or the correct fee or procedure code to be used under the workers' compensation [~~supplemental~~] medical fee schedule, the insurer shall:

(1) Pay all undisputed charges within thirty days after the insurer has received reasonable proof of the fact and amount of benefits accrued and demand for payment thereof; and

(2) Negotiate in good faith with the provider on the disputed charges for a period up to sixty days after the insurer has received reasonable proof of the fact and amount of benefits accrued and demand for payment thereof.

If the provider and the insurer are unable to resolve the dispute after a period of sixty days pursuant to paragraph (2), the provider, insurer, or claimant may submit the dispute to the commissioner, arbitration, or court of competent jurisdiction. The parties shall include documentation of the efforts of the insurer and the provider to reach a negotiated resolution of the dispute. This section shall not be subject to the requirements of section 431:10C-304(3) with respect to all disputes about the amount of a charge or the correct fee and procedure code to be used under the workers' compensation [~~supplemental~~] medical fee schedule. An insurer who disputes the amount of a charge or the correct fee or procedure code under this section shall not be deemed to have denied a claim for benefits under section 431:10C-304(3); provided that the insurer shall pay what the insurer believes is the amount owed and shall furnish a written explanation of any adjustments to the provider and to the claimant at no charge, if requested. The provider, claimant, or insurer may submit any dispute involving the amount of a charge or the correct fee or procedure code to the commissioner, to arbitration, or to a court of competent jurisdiction.

(f) The provider of services described in section 431:10C-103.5(a) shall not bill the insured directly for those services but shall bill the insurer for a determination of the amount payable. The provider shall not bill or otherwise attempt to collect from the insured the difference between the provider's full charge and the amount paid by the insurer.

(g) A health care provider shall be compensated by the insurer for preparing reports documenting the need for treatments which exceed the workers' compensation [~~supplemental~~] medical fee schedule in accordance with the fee schedule for special reports. The health care provider may assess the cost of preparing a report to the insurer at no more than $20 per page up to a maximum of $75 for each report.

§431:10C-304 Obligation to pay personal injury protection benefits. For purposes of this section, the term "personal injury protection insurer" includes personal injury protection self-insurers. Every personal injury protection insurer shall provide personal injury protection benefits for accidental harm as follows:

(1) Except as otherwise provided in section 431:10C-305(d), in the case of injury arising out of a motor vehicle accident, the insurer shall pay, without regard to fault, to the provider of services on behalf of the following persons who sustain accidental harm as a result of the operation, maintenance, or use of the vehicle, an amount equal to the personal injury protection benefits as defined in section 431:10C-103.5(a) payable for expenses to that person as a result of the injury:

(A) Any person, including the owner, operator, occupant, or user of the insured motor vehicle;

(B) Any pedestrian (including a bicyclist); or

(C) Any user or operator of a moped as defined in section 249-1; provided that this paragraph shall not apply in the case of injury to or death of any operator or passenger of a motorcycle or motor scooter as defined in section 286-2 arising out of a motor vehicle accident, unless expressly provided for in the motor vehicle policy;

(2) Payment of personal injury protection benefits shall be made as the benefits accrue, except that in the case of death, payment of benefits under section 431:10C-302(a)(5) may be made immediately in a lump sum payment, at the option of the beneficiary;

(3) (A) Payment of personal injury protection benefits shall be made within thirty days after the insurer has received reasonable proof of the fact and amount of benefits accrued, and demand for payment thereof. All providers must produce descriptions of the service provided in conformity with applicable fee schedule codes;

(B) If the insurer elects to deny a claim for benefits in whole or in part, the insurer shall, within thirty days, notify the claimant in writing of the denial and the reasons for the denial. The denial notice shall be prepared and mailed by the insurer in triplicate copies and be in a format approved by the commissioner. In the case of benefits for services specified in section 431:10C-103.5(a) the insurer shall also mail a copy of the denial to the provider; and

(C) If the insurer cannot pay or deny the claim for benefits because additional information or loss documentation is needed, the insurer shall, within the thirty days, forward to the claimant an itemized list of all the required documents. In the case of benefits for services specified in section 431:10C-103.5(a) the insurer shall also forward the list to the service provider;

(4) Amounts of benefits which are unpaid thirty days after the insurer has received reasonable proof of the fact and the amount of benefits accrued, and demand for payment thereof, after the expiration of the thirty days, shall bear interest at the rate of one and one-half per cent per month;

(5) No part of personal injury protection benefits paid shall be applied in any manner as attorney's fees in the case of injury or death for which the benefits are paid. The insurer shall pay, subject to section 431:10C-211, in addition to the personal injury protection benefits due, all attorney's fees and costs of settlement or suit necessary to effect the payment of any or all personal injury protection benefits found due under the contract. Any contract in violation of this provision shall be illegal and unenforceable. It shall constitute an unlawful and unethical act for any attorney to solicit, enter into, or knowingly accept benefits under any contract;

(6) Disputes between the provider and the insurer over the amount of a charge or the correct fee or procedure code to be used under the workers' compensation [~~supplemental~~] medical fee schedule shall be governed by section 431:10C-308.5; and

(7) Any insurer who violates this section shall be subject to section 431:10C-117(b) and (c).

NEIL ABERCROMBIE
GOVERNOR

DWIGHT Y. TAKAMINE
DIRECTOR

JADE T. BUTAY
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
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HONOLULU, HAWAII 96813
http://labor.hawaii.gov

March 27, 2014

To: The Honorable Sylvia Luke, Chair,
The Honorable Scott Nishimoto & Honorable Aaron Ling Johanson, Vice Chairs;
Members of the House Committee on Finance

Date: Thursday, March 27, 2014
Time: 3:00 p.m.
Place: Conference Room 308, State Capitol

From: Dwight Takamine, Director
Department of Labor and Industrial Relations (DLIR)

Re: S.B. No. 2365, S.D. 2, H.D. 2 Relating to Insurance Claims

The 2013 Legislature provided the Disability Compensation Division (DCD) with thirteen additional positions to restore the drastic reduction in capacity of the Division. The DLIR is very appreciative of the Legislature's provision of these positions.

Nine of those positions were for the Honolulu Hearings Section to alleviate the backlog in Workers' Compensation hearings. The Hearings Section also reviews all attorney fees, reconsideration/appeals, billing disputes, claimant/employer complaints. The billing disputes before the DLIR have grown from less 150 to 2,400 plus in recent years.

These disputes pertaining to repackaged, relabeled and compounded medications between certain carriers, self-insured entities and providers of service have inundated the department and overwhelmed its ability to referee these matters. The DLIR believes this measure, if crafted appropriately, will reduce the current number of disputes and prevent disputes in the future. This would enable the DCD to focus on reducing the number of backlogged workers' compensation hearings.

The DLIR is in the process of analyzing which medications index to recommend and will report to the appropriate Committees upon completion of that research (Red Book or Medi-span).

Lastly, the DLIR supports making sure the new section in the proposal is connected with chapter 431:10C to maintain consistency with the application of the current no-fault law (no fault medical reimbursements are tied to the WC Medical Fee Schedule).

The DLIR is hopeful that with further clarification of the issues and continued deliberations, this proposal will address the issues of fairer reimbursement of prescription medications and lower the medical costs in Hawaii's workers' compensation system.

NEIL ABERCROMBIE
GOVERNOR

BARBARA A. KRIEG
DIRECTOR

LEILA A. KAGAWA
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
235 S. BERETANIA STREET
HONOLULU, HAWAII 96813-2437

March 25, 2014

TESTIMONY TO THE
HOUSE COMMITTEE ON FINANCE

For Hearing on Thursday, March 27, 2014
3:00 p.m., Conference Room 308

BY

BARBARA A. KRIEG
DIRECTOR

Senate Bill No. 2365, S.D. 2, H.D. 2
Relating to Insurance Claims

TO CHAIRPERSON SYLVIA LUKE AND MEMBERS OF THE COMMITTEE:

Thank you for the opportunity to provide testimony on S.B. No. 2365. S.D. 2, H.D. 2.

The purpose of S.B. 2365, S.D. 2, H.D. 2, is to limit the reimbursement payments of prescription medications, including relabeled, repackaged, or compounded prescription medications, in workers' compensation claims; and require motor vehicle insurance benefits to automatically adopt the prescription drug pricing protections associated with the workers' compensation supplemental medical fee schedule, unless otherwise modified by the Insurance Commissioner through rulemaking.

The Department of Human Resources Development (DHRD) has a fiduciary duty to administer the State's self-insured workers' compensation program and its expenditure of public funds. It is in this capacity that DHRD **strongly supports** this bill, with one amendment, as it pertains to workers' compensation.

This proposal is consistent with our past efforts to cap repackaged drug markups at 140% of the average wholesale price (AWP) as set by the original manufacturer. The

voluminous testimony in support of H.B. 891, Relating to Workers' Compensation Drugs, in the 2013 Legislature, and in support of H.B. 1960 and this bill in the current session, explains the problem in detail. In summary, the State of Hawaii Workers' Compensation Medical Fee Schedule (WCMFS), Section 12-15-55(c), HAR, allows pharmaceuticals to be charged to insurance carriers at up to 140% of the AWP listed in the American Druggist Red Book. This has resulted in third-party companies buying drugs in bulk and then repackaging or compounding the medications so that they can attach their own national drug code (NDC) number to the drugs, with a higher AWP. Insurance carriers are then billed at 140% of the higher AWP, resulting in charges that are much higher than what would otherwise be billed using the original NDC and AWP.

However, we respectully recommend that this committee restore the "major retail pharmacy" language from the S.D. 1 and H.D. 1 iterations of this bill. As succinctly described in testimony submitted by the City and County of Honolulu, Department of Human Resources, the reference to "major" retail pharmacies will help to ensure that a medication whose sole purpose is to provide an inflated profit margin will not be reimbursed.

We believe passage of this bill—with our suggested amendment—will have several benefits for our self-insured workers' compensation program, including reducing the State's costs for medical care, services, and supplies; reducing the number of billing disputes brought before the Department of Labor and Industrial Relations (which has been as high as 2,400) and removing potential financial incentives to over-prescribe medications to claimants.

Thank you for the opportunity to testify in **strong support** of this measure, with one amendment.

DEPARTMENT OF HUMAN RESOURCES

CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR

CAROLEE C. KUBO
DIRECTOR

NOEL T. ONO
ASSISTANT DIRECTOR

March 27, 2014

The Honorable Sylvia Luke, Chair
and Members of the
Committee on Finance
House of Representatives
State Capitol, Room 308
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Luke and Members of the Committee:

SUBJECT: Senate Bill No. 2365, SD2, HD2, Relating to Insurance Claims

The purpose of Senate Bill No. 2365, SD2, HD2, is to limit reimbursement of prescription medications to prevent drug prices from becoming an unreasonable cost driver of health care in workers' compensation claims. While we strongly support the intent of the measure, a recent amendment to the measure has minimized the effectiveness of S.B. 2365 and could actually have the unintended effect of increasing the cost of prescription drug prices in workers' compensation claims. As a result, the City and County of Honolulu respectfully requests that the following amendments be made to S.B. 2365, SD2, HD2.

1. Page 3, Lines 1 – 3. We recommend the last portion of subsection (b) be amended to read "is not available at a **major** retail pharmacy within the State shall not be reimbursed."

2. We further recommend that the following definitions for "Major retail pharmacy" and "Available" be included in subsection (f).

"Major retail pharmacy" means a retail pharmacy with five or more physical locations in the State and ten or more physical locations in other states.

"Available" means the prescription drug as identified by the submitted National Drug Code is available for purchase in the major retail pharmacy's inventory during the ordinary course of business and the prescription drug's National Drug Code and dosage are listed on the Federal Food and Drug Administration database.

The purpose of limiting reimbursement of prescription medications to only those available at a major retail pharmacy in the State is to protect claimants and their insureds from having to pay for medication whose sole purpose is to provide an outrageous profit margin. The following situation provides a telling example.

An entity recently submitted a bill for Tramadol 150 with the "original manufacturer's" National Drug Code (NDC). The per unit Average Wholesale Price (AWP) for that particular drug is set at $10.74 per pill. At a fee schedule of AWP plus 40%, a one month prescription consisting of 270 pills would cost $4,059.72 (AWP + 40%). Until recently, this particular drug has not been manufactured or prescribed in Hawaii. Moreover, to the best of our knowledge, the medication is not available at major retail pharmacies in Hawaii.

By comparison, the most commonly dispensed form of Tramadol is a 50 mg pill. The AWP for that drug is $0.81 per tablet or $2.43 for 150 mg. At AWP plus 40%, the same prescription in a regular dosage would only cost $918.54. Thus a party selling Tramadol 150 will be making a monthly profit of $3,141.18 per each Tramadol 150 prescription. Conservative estimating that a provider prescribes Tramadol for only ten of his or her patients, that entity is making or sharing a profit of $31,411.80 a month or $376,941.16 a year just on that one particular medication.

As evidenced by the situation set forth above, the suggested amendments are critical to control the costs of prescription medication in Hawaii. The City accordingly strongly supports Senate Bill No. 2365, SD2, HD2, with the foregoing revisions.

Thank you for the opportunity to testify.

Sincerely,

Carolee C. Kubo
Director

Testimony to the House Committee on Finance
Thursday, March 27, 2014 at 3:00 P.M.
Conference Room 308, State Capitol

RE: SENATE BILL 2365 SD2 HD2 RELATING TO INSURANCE CLAIMS

Chair Luke, Vice Chairs Nishimoto and Johanson, and Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") **strongly supports** SB 2365 SD2 HD2.

The Chamber is the largest business organization in Hawaii, representing over 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The Chamber supports the bill's intent to restrict the reimbursement of repackaged prescription drugs and compound medications to amounts similar in a retail pharmacy. Testimony submitted by the Hawaii Insurers Council in the 2011 legislative session detailed prescription drug markups of anywhere from thirteen percent, to several hundred percent or much more, over the average wholesale price after the drugs were repackaged, re-labeled, and distributed by physicians. In the last 4-5 years, insurers and those who are self-insured have been billed excessive markups of the original cost of the drug. This practice is not sustainable. We believe that this bill helps to contain costs and provide stability in the system which will eventually help businesses.

SB2365 SD2 HD2 seeks to clarify existing rules in motor vehicle and workers' compensation insurance by outlining the intent of the rules to reimburse drugs at the original manufacturer's national drug code plus 40%.

Thank you for the opportunity to express our views on this matter.

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Alison Powers
Executive Director

TESTIMONY OF ALISON POWERS

HOUSE COMMITTEE ON FINANCE
Representative Sylvia Luke, Chair
Representative Scott Y. Nishimoto, Vice Chair
Representative Aaron Ling Johanson, Vice Chair

Thursday, March 27, 2014
3:00 p.m.

SB 2365, SD2, HD2

Chair Luke, Vice Chairs Nishimoto and Johanson, and members of the Committee, my name is Alison Powers, Executive Director of Hawaii Insurers Council. Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately one third of all property and casualty insurance premiums in the state.

Hawaii Insurers Council supports this bill. Hawaii's laws on reimbursement for prescription drugs and compound medications for those injured in motor vehicle accidents and at work are currently governed by Administrative Rules under Title 16-23-114 and Title 12-15-55, respectively. These rules have been on the books for decades, however, in the last 4-5 years a loophole has been exposed and insurers and self insureds have been billed excessive mark ups of the original cost of the drug.

This bill seeks to clarify and codify existing rules in motor vehicle and workers' compensation insurance by outlining the intent of these rules which is to reimburse drugs at the original manufacturer's national drug code plus 40%. In addition, the bill does not allow reimbursement for prescription drugs not sold in a retail pharmacy.

We ask that you pass this bill. Thank you for the opportunity to testify.

HAWAII MEDICAL ASSOCIATION
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To:
Rep. Sylvia Luke, Chair
Rep. Scott Y. Nishimoto, Vice Chair
Rep. Aaron Ling Johanson, Vice Chair
Members of the Committee on Finance

DATE: **Thursday, March 27, 2014**
TIME: **3:00 P.M.**
PLACE: **Conference Room 308**

FROM: Hawaii Medical Association
Dr. Walton Shim, MD, President
Dr. Linda Rasmussen, MD, Legislative Co-Chair
Dr. Ron Kienitz, DO, Legislative Co-Chair
Dr. Christopher Flanders, DO, Executive Director
Lauren Zirbel, Community and Government Relations

RE: SB 2365 RELATING TO INSURANCE CLAIMS

POSITION: Comments

HMA supports the intent of SB 2365 HD1 to prevent drug prices from becoming an unreasonable cost driver of health care in workers' compensation and motor vehicle claims but opposes specific provisions of the legislation which are detailed below.

Proposed Changes:

(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 **Medi-Span Master Drug Database** 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**; provided that payment for a prescription drug that is not available at a retail pharmacy within the State shall not be reimbursed.

Officers
President - Walton Shim, MD President-Elect – Robert Sloan, MD
Secretary - Thomas Kosasa, MD Immediate Past President – Stephen Kemble , MD
Treasurer – Brandon Lee, MD Executive Director – Christopher Flanders, DO

(c) Payment for compounded prescription drugs shall be 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 **Medi-Span Master Drug Database** 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 the provider's assignee, for a lower amount.**

Rationale:

- ✓ Use of ***"shall be"*** – Reimbursement terms should be exact. Language providing that reimbursement shall not exceed a certain amount leaves room for disagreement over what the proper reimbursement should be. As written, the language creates a reimbursement ceiling without imposing a reimbursement floor.

- ✓ Inclusion of "***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***" – This language still affords payors the ability to contract for reimbursement rates below 140%.

- ✓ Changing pricing publication to ***"Medi-Span Master Drug Database"*** – Medi-Span is the leading provider of medication reference information and data. It is considered a more widely used and comprehensive sourcebook over RedBook and now offers meaningful use support (including drug-to-drug and drug-to-allergy interaction checks). In addition, Medi-Span provides for easier integration with existing billing software. Changing from Redbook to Medi-Span is not expected to impose any additional costs on the state.

- Government Employees Insurance Company
- GEICO General Insurance Company
- GEICO Indemnity Company
- GEICO Casualty Company

TIMOTHY M. DAYTON, CPCU, GENERAL MANAGER
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House Committee on Finance
Conference Room 308 State Capitol
Thursday, March 27, 2014, 3:00 pm.
SB 2365, SD2, HD2 – Relating to Insurance Claims

Chair Luke, Vice-Chair Nishimoto, Vice-Chair Johansen, and Members of the House Committee on Finance Commerce:

My name is Cinda Smith, Senior Counsel for GEICO, Hawaii's largest insurer of motor vehicles. **GEICO supports the intent and earlier versions of SB 2365, SD2, HD2**. SB 2365, SD2, HD1 provided that payment for a prescription drug that is not available at a **major** retail pharmacy within the State would **not** be reimbursed. The current language, which strikes the word "major," will invite controversy and abuse. Previous versions of the bill accomplished the stated purpose. It is of critical importance that the prescription drug **be available** at a major retail pharmacy in order to prevent subverting the intent of the bill by introducing drugs that have exorbitant prices and are targeted to workers compensation and motor vehicle benefits. It would **not** be required that the prescription drug be **purchased** at a major retail pharmacy.

Thank you for the opportunity to submit and your consideration of this testimony.

Cinda K. Smith

Please Support SB 2365, SD 2, HD 2, because it is pro-insurance consumer, pro-medication safety, & pro-prescription drug fraud prevention

What the proposed legislation would do: SB 2365, SD 2, HD 2, would accomplish the following:

1) It prevents prescription drug costs, for all forms of prescription drugs including repackaged and relabeled drugs, from exceeding 140% of the average wholesale price set by the original manufacturer of the dispensed prescription drug as identified by its National Drug Code;

2) SB 2365, SD 2, HD 2, would prevent insurers and consumers from being charged for compound drugs an amount that exceeds 140% of the average wholesale price by gram weight of each underlying prescription drug contained in the compounded prescription drug; and

3) The proposed legislation states that "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.

Why the proposed legislation is good for WC insurers, employers and injured workers, auto insurance consumers, and the general public:

1) SB 2365, SD2, HD 2, will effectuate the creation of thoughtful and appropriate pharmaceutical cost-containment controls that are necessary to prevent the ever-increasing cost of medications from adversely impacting the affordability of workers' compensation insurance for small businesses and their employees, and the cost of state mandated automobile insurance coverage for consumers;

2) The proposed legislation fairly balances the needs of all stakeholders, by allowing for appropriate retail price markups, providing for the use of a reasonable and reliable objective pricing standard, and setting forth clear guidelines for how to address pricing caps for repackaged, relabeled drugs and compound drugs;

3) SB 2365, SD2, HD 2, is necessary from a consumer fraud-prevention standpoint, because it will make it less profitable for those who want to "game the system" and reap unconscionable profits by relabeling, repackaging, and/or compounding drugs so that they can circumvent standard medical pricing of medications that are in place to protect consumers;

4) The proposed legislation is consistent with the national trend on the prescribing of medications by requiring that consumers be provided with "equivalent generic drug products" as a substitute 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.

Please "Vote Yes" on SB 2365, SD 2, HD 2, because prescription drug pricing fraud hurts insurance consumers, employers, injured workers, municipalities, and all citizens in the State of Hawaii.

Fact-Sheet prepared by Christian Rataj of the National Association of Mutual Insurance Companies (NAMIC). The 1,400 NAMIC member companies serve more than 135 million auto, home and business policyholders and write more than $196 billion in annual premiums, accounting for 50 percent of the automobile/homeowners market and 31 percent of the business insurance market. NAMIC has 69 members who write property/casualty and workers' compensation insurance in the State of Hawaii, which represents 30% of the insurance marketplace.

The Twenty-Seventh Legislature
Regular Session of 2014

HOUSE OF REPRESENTATIVES
Committee on Finance
Rep. Sylvia Luke, Chair
Rep. Scott Y. Nishimoto, Vice Chair
Rep. Aaron Ling Johanson, Vice Chair
State Capitol, Conference Room 308
Thursday, March 27, 2014; 3:00 p.m.

STATEMENT OF THE ILWU LOCAL 142 ON S.B. 2365, SD2, HD2
RELATING TO INSURANCE CLAIMS

The ILWU Local 142 supports the intent of S.B. 2365, SD2, HD2, which limits the reimbursement payments of prescription medications, including relabeled, repackaged, or compounded prescription medications, in workers' compensation claims and requires motor vehicle insurance benefits to automatically adopt the prescription drug pricing protections associated with the workers' compensation supplemental medical fee schedule, unless otherwise modified by the Insurance Commissioner through rule-making.

In the recent period, disputes have arisen between insurers/employers and some physicians who dispense prescription drugs from their offices over the pricing of prescription drugs for patients receiving workers' compensation benefits. Insurers/employers argue that prices are exorbitant and must be curbed while physicians in the practice of dispensing medications from their offices posit that the pricing is in line with the services provided and help to offset low reimbursements for medical care under workers' compensation.

The goal of workers' compensation is to return the injured worker to gainful employment, either to the job where he was injured or to a comparable new job. The injured worker wants to get medical treatment, including medication, that will help him achieve that goal but does not want to be caught in the middle of the wrangling between the insurer/employer and some physicians.

We understand the debate but also believe that pricing should be fair. We support the intent of S.B. 2365, SD2, HD2 to serve the needs and interests of all parties and establish limits on the price of prescription drugs provided under workers' compensation. No one should make an unfair profit from workers' compensation.

However, the shortage of physicians willing to treat injured workers is very alarming. Low reimbursements and high paperwork requirements under workers' compensation have driven many physicians to discontinue treating injured workers—or not consider treating them in the first place. These issues must be addressed if the workers' compensation law is to serve its intended purpose to provide medical treatment and benefits to workers injured on the job so they can return to gainful employment.

S.B. 2365, SD2, HD2 also applies the same price caps for prescription drugs provided under motor vehicle insurance claims. We cannot comment on whether this is appropriate or not, except to say that workers' compensation and motor vehicle insurance are very different. For workers' compensation, benefits are fairly open-ended, depending on what is required and what the insurer will pay. For motor vehicle insurance, benefits are capped by a dollar amount determined on the insurance policy.

Thank you for considering our comments.

To: **Rep. Sylvia Luke, Chair**
Rep. Scott Y. Nishimoto, Vice Chair
Rep. Aaron Ling Johanson, Vice Chair
Members of the Committee on Finance

Date: **Thursday, March 27, 2014**
Time: **3:00 PM**
Place: **Conference Room 308**
State Capitol
415 South Beretania Street

COMMENTS ON SENATE BILL 2365 HD2

Automated HealthCare Solutions (AHCS) submits the following testimony related to Senate Bill 2365 HD2 (SB 2365 HD2).

AHCS supports the intent of SB 2365 HD2 to prevent drug prices from becoming an unreasonable cost driver of health care in workers' compensation and motor vehicle claims but opposes specific provisions of the legislation which are detailed below.

SB 2365 HD2 provides:

> Payment for all forms of prescription drugs including repackaged and relabeled drugs shall not exceed 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; provided that payment for a prescription drug that is not available at a retail pharmacy within the State shall not be reimbursed.
>
> Payment for compounded prescription drugs shall not exceed one hundred forty per cent of the average wholesale price by gram weight. . .

AHCS opposes the "shall not exceed" language used in the foregoing provisions which sets a reimbursement ceiling without defining a reimbursement floor. AHCS suggests that this language will only exacerbate the claim dispute process by not creating a definitive

reimbursement rate and potentially provides an opportunity for payors to arbitrarily reduce reimbursement to rates below the designated one hundred forty per cent. Accordingly, AHCS suggests that the language be amended so that reimbursement "shall be" one hundred forty per cent of the average wholesale price set by the original manufacturer, absent the parties directly contracting for a lower amount, as provided in SB 2365 SD1 and SB 2365 SD2.

In addition, AHCS would recommend the adoption of Medi-Span Master Drug Database in lieu of the current medication pricing publication, Red Book. Medi-Span is considered a more widely used and comprehensive sourcebook and provides for easier integration into existing billing software. As a result, AHCS believes this is a more accurate and user-friendly pricing publication for all parties.

AHCS <u>supports</u> tying payment to the "date of [medication] dispensing", which has been deemed acceptable language by stakeholders in the physician and payor community, as it is already common industry practice to submit claims for reimbursement for prescription medication that reflect the average wholesale price on the date the medication is dispensed to a patient or customer[1]. To alter the process for determining payment going forward would only further complicate the reimbursement process this legislation aims to simplify. For those entities which currently bill for prescription medications electronically, making any additional changes to the "date of [medication] dispensing" language may force those entities (including pharmacies, PBMs, third party billing entities, etc.) to overhaul their entire IT infrastructure and/or claims processing systems to accommodate an unnecessary requirement.

Lastly, AHCS has reached out to other stakeholders in an effort to bridge the gap between the parties and come up with a compromise bill acceptable to all those affected by this legislation. AHCS would like to point out that while the parties are close to a resolution, several of the foregoing issues still need to be resolved. AHCS is hopeful that the parties can work out the remaining differences in the near future.

Thank you for your consideration.

Jennifer Maurer, Esq.
Government Relations Director
Automated HealthCare Solutions, LLC

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[1] *For examples, see Florida Stat. §440.13(12)(c); 820 Illinois Stat. § 305-8.2(a-3); Tenn. Comp. R. & Regs. 0800-02-18-.12(1)(h); Wisconsin §102.425(3)(a); 803 Kentucky Admin. Regs. 25:092(2); Georgia Workers' Compensation Medical Fee Schedule, Sec. IV, "Pharmaceuticals".*

finance1

From:	mailinglist@capitol.hawaii.gov
Sent:	Thursday, March 27, 2014 8:45 AM
To:	FINTestimony
Cc:	frankvannatta@hotmail.com
Subject:	Submitted testimony for SB2365 on Mar 27, 2014 15:00PM

LATE

SB2365
Submitted on: 3/27/2014
Testimony for FIN on Mar 27, 2014 15:00PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
James Van Natta	Individual	Comments Only	No

Comments: I, James Van Natta, MD, an individual, would like to submit the following comments to the Members of the Committee on Finance related to Senate Bill 2365 HD2 (SB 2365 HD2). I oppose the “shall not exceed” language used in the foregoing provisions which sets a reimbursement ceiling without defining a reimbursement floor. This language will only make the claim dispute process more backed up. I suggest that the language be amended so that reimbursement “shall be” one hundred forty per cent of the average whole sale price set by the original manufacturer, as provided in SB 2365 SD1 and SB 2365 SD2. I support tying payment to the “date of [medication] dispensing”, for reimbursement for prescription medication that reflect the average wholesale price on the date the medication is dispensed to a patient or customer. To alter the process for determining payment going forward would only further complicate the reimbursement process this legislation aims to simplify. For those entities which currently bill for prescription medications electronically, making any additional changes to the “date of [medication] dispensing” language may force those entities (including pharmacies, PBMs, third party billing entities, etc.) to overhaul their entire IT infrastructure and/or claims processing systems to accommodate an unnecessary requirement. I recommend the adoption of Medi-Span Master Drug Database instead of the current, Red Book. Medi-Span is considered a more widely used and comprehensive sourcebook and provides for easier integration into existing billing software. My billing company believes this is a more accurate and user-friendly pricing publication for all parties. According to Medi-Span, their data base will not cost the state anything to implement.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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LATE

To: The Honorable Sylvia Luke, Chair
The Honorable Scott Y. Nishimoto, Vice Chair
The Honorable Aaron Ling Johanson, Vice Chair
House Committee on Finance

From: Mark Sektnan, Vice President

Re: **SB 2365 SD2 HD2 – Relating to Insurance Claims**
PCI Position: Support

Date: Thursday, March 27, 2014
Agenda #2, 3:00 p.m., Conference Room 308

Aloha Chair Luke, Vice Chairs Nishimoto and Johanson and Members of the Committee:

The Property Casualty Insurers Association of America (PCI) supports SB 2365 SD2 HD2 which addresses a major issue facing workers' compensation insurers – the abusive pricing practices of some repackagers and compounders. These abusive practices also confront automobile insurers who are required to provide motor vehicle personal injury protection benefits (PIP). The negative impact in PIP is even greater since the benefits are limited. PCI is a national trade association that represents over 1,000 property and casualty insurance companies. In Hawaii, PCI member companies write approximately 34.6 percent of all property casualty insurance written in Hawaii. PCI member companies write 42.2 percent of all personal automobile insurance, 43.5 percent of all commercial automobile insurance and 58.9 percent of the workers' compensation insurance in Hawaii.

A significant workers compensation pharmacy cost-driver has been the over-prescribing of repackaged drugs where a repackager or physician takes a drug and repackages the drug. By doing this, the repackager "creates" a new drug that is not on the fee schedule and charges a much higher rate. Another major cost-driver is the over-prescribing of compound drugs, which are customized mixtures of multiple drugs and other remedies intended to better meet the unique needs of the patient. While the original intent of these drug combinations is to provide better medical care to patients, they have become a "loophole" that is being exploited by a small number of physicians to generate additional revenue streams. A short overview of the process is listed below:

- Physician writes prescription for customized mixture of ingredients, not available at strengths or combinations in existing retail market;
- Pharmacy prepares mixture to specifications, using bulk drugs (usually generic), packages, labels and dispenses;

- May involve partnership between prescribing physician and compounding pharmacy;
- Large number of compounds are topical preparations, often involving drugs for which oral formulations exist (e.g., topical tricyclic anti-depressants);
- Usually no evidence that compound medication is superior, equivalent to retail, or even effective for condition being treated; and
- Concentration of costs with a few pharmacies which seem to specialize in compounding.

PCI believes that reimbursement for compounded drugs should be based on the NDC codes of the original manufacturer of each active ingredient with no additional reimbursement for ingredients with no NDC code.

Drug costs, especially repackaged and compound drugs, have been one of the biggest cost drivers in workers' compensation systems across the country. Self-insured entities (including the State of Hawaii and Hawaii's counties, as well as private businesses such as Marriott and Safeway) also pay for the costs of abusive/inflated repackaged drug pricing.

In testimony last year before the Senate Ways and Means Committee and House Finance Committee, the State Department of Budget & Finance Director Kalbert Young said that the Administration will be asking for an additional $3.5 million for each of the next two fiscal years to cover *non-discretionary cost increases* for risk management and workers compensation. A substantial portion of the cost increases the state is seeing are likely to have come from artificially inflated repackaged prescription drug/compound medication costs. The recent dispute between the City & County of Honolulu and Automated HealthCare Solutions ("AHCS"), a Florida-based "billing company" through which repackaged drugs and compound meds flow, is a good example of the problems caused for taxpayers and businesses by uncontrolled repackaged drug and compound medication costs.

By regulating markups of "re-packaged" prescription drugs and "compound medications" (practices that were also abused until regulated in states such as California, Arizona, and Mississippi), SB 2365 SD2 HD2 will help to contain unreasonable prescription drug costs in Hawaii's workers' compensation insurance system as "re-packagers" expand into states – including Hawaii - where costs of "re-packaged" drugs and "compound medications" are not regulated.

PCI respectfully requests that you pass this bill. Thank you for the opportunity to provide comments.

WIMAH

WORK INJURY MEDICAL ASSOCIATION OF HAWAII
91-2135 Fort Weaver Road Suite #170
Ewa Beach, Hawaii 96706

MAULI OLA
THE POWER OF HEALING

MARCH 27, 2014

COMMITTEE ON FINANCE

SENATE BILL 2365 SD2 HD2 RELATING TO INSURANCE CLAIMS

LIMITS THE REIMBURSEMENT PAYMENTS OF PRESCRIPTION MEDICATIONS, INCLUDING RELABELED, REPACKAGED, OR COMPOUND PRESCRIPTION MEDICATIONS, IN WORKERS' COMPENSATION CLAIMS. REQUIRES MOTOR VEHICLE INSURANCE BENEFITS TO AUTOMATICALLY ADOPT THE PRESCRIPTION DRUG PRICING PROTECTIONS ASSOCIATED WITH THE WORKERS' COMPENSATION SUPPLEMENTAL MEDICAL FEE SCHEDULE, UNLESS OTHERWISE MODIFIED BY THE INSURANCE COMMISSIONER THROUGH RULEMAKING. EFFECTIVE JULY 1, 2050.

WORK INJURY MEDICAL ASSOCIATION OF HAWAII SUPPORTS THE INTENT OF SENATE BILL 2365 SD2 HD2. WE ARE CONCERNED ABOUT THE HIGH COST OF HEALTH CARE IN WORKERS' COMPENSATION AND MOTOR VEHICLE CLAIMS.

WE ARE CONCERNED ABOUT ITEM'S WITHIN SENATE BILL 2365 SD2 HD2. SUCH AS THE USE OF THE PUBLICATION RED BOOK. WE WOULD RECOMMEND THE USE OF MEDI-SPAN MASTER DRUG DATABASE WHICH HAS A WIDER BASE OF USE AND IS MORE USER FRIENDLY. MEDISPAN IS ALSO UPDATED MORE OFTEN.

WE SUGGEST THE REIMBURSEMENT RATE **"SHALL BE"** SET AT 140 PERCENT OF THE AVERAGE WHOLESALE PRICE SET BY THE ORIGINAL MANUFACTURER. THIS WILL MINIMIZE CLAIMS DISPUTE WITH MORE PRECISE LANGUAGE.

RESOLUTION ON THESE MATTERS WOULD BE APPRECIATED.

GEORGE M. WAIALEALE
EXECUTIVE DIRECTOR
WORK INJURY MEDICAL ASSOCIATION OF HAWAII

EMAIL: WIMAHEXDIR@AOL.COM PHONE: (808)-383-0436

TESTIMONY BEFORE THE HOUSE OF REPRESENTATIVES

COMMITTEE ON FINANCE

Thursday, March 27, 2014
3:00 p.m.

LATE TESTIMONY

SB 2365, SD2, HD2
RELATING TO INSURANCE CLAIMS

By Marleen Silva
Director, Workers' Compensation
Hawaiian Electric Company, Inc.

Chair Luke, Vice Chairs Nishimoto and Johanson, and Members of the Committee:

Hawaiian Electric Co. Inc., its subsidiaries, Maui Electric Company, LTD., and Hawaii Electric Light Company, Inc. represent over 2,000 employees throughout the State, and **strongly supports S.B. 2365, SD2, HD2.**

The purpose and intent of this bill is to reasonably limit the reimbursement rates of repackaged, relabeled, and compound prescription medications in workers' compensation claims and require motor vehicle insurance benefits to automatically adopt the prescription drug protections associated with the Workers' Compensation Medical Fee Schedule, unless otherwise modified by the Insurance Commissioner through rulemaking.

We believe passage of this version of the measure will bring many benefits by reasonably regulating the pricing of repackaged, relabeled and compound medications, clarifying allowable dispensing practices, and eliminating the potential financial incentives to overprescribe medications.

We kindly request your favorable consideration of **SB 2365, SD2, HD2**. Thank you for the opportunity to submit testimony in strong support of this measure.