

JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LIEUTENANT GOVERNOR



JADE T. BUTAY
DIRECTOR

WILLIAM G. KUNSTMAN
DEPUTY DIRECTOR

STATE OF HAWAII
KA MOKU'ĀINA O HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
KA 'OIHANA PONO LIMAHAHA

February 17, 2026

To: The Honorable Jackson D. Sayama, Chair,
The Honorable Mike Lee, Vice Chair, and
Members of the House Committee on Labor

Date: Tuesday, February 17, 2026
Time: 9:00 a.m.
Place: Conference Room 309, State Capitol

From: Jade T. Butay, Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. 1648 RELATING TO WORKERS' COMPENSATION

I. OVERVIEW OF PROPOSED LEGISLATION

The **DLIR appreciates the intent** of this measure to address excessive medication charges within the workers' compensation system and offers comments to ensure that the measure does not inadvertently restrict medically appropriate care for injured workers. Therefore, the **Department respectfully requests amendments** to achieve this balance.

HB1648 proposes to amend HRS Chapter 386 by:

- Adding a new section that prohibits health care providers from prescribing or dispensing nonprescription drugs, over-the-counter drugs, and nonlegend drugs for injured workers, and
- Providing definitions by reference to §328-1 for "nonprescription drug", "over-the-counter drug", and "nonlegend drug" (HRS Chapter 328 Food, Drugs, And Cosmetics)

II. CURRENT LAW

§386-21(a) states that immediately after a work injury sustained by an employee, and so long as reasonably needed, the employer shall furnish to the employee all medical care, services, and supplies as the nature of the injury requires.

§386-21.7 provides that immediately after a work injury is sustained by an employee and so long as reasonable needed, the employer shall furnish to the employee all prescription drugs as the nature of the injury requires,

Hawai'i Administrative Rules (HAR) §12-15-55 provides:

- That charges for prescribed drugs, supplies, or materials furnished to an injured employee must be separately listed and certified by the provider, or a duly authorized representative, confirming that the items were required and prescribed for the industrial injury.
- Dietary supplements, including minerals and vitamins, are not reimbursable unless a specific compensable dietary deficiency has been clinically established in the injured employee as a direct result of the industrial injury.
- Payment for prescriptive drugs will be made at the average wholesale price listed in the *Red Book* plus forty percent when the drugs are sold by a physician, hospital, pharmacy, or other provider of service.
- Billings for prescriptive drugs must include the National Drug Code number listed in the current *Red Book*, followed by the wholesale price at the time of purchase by the provider.

§328-1 “Nonprescription drug”, “over-the-counter drug”, or “nonlegend drug”, is defined as any packaged, bottled, or nonbulk chemical, drug, or medicine that may be lawfully sold without a practitioner’s order.

§328-1 “Practitioner” is defined as an individual licensed by the State or authorized by the laws of the State to prescribe prescription drugs within the scope of the person’s practice.

§328-1 “Prescription” is defined as an order or formula issued by a practitioner for the compounding or dispensing of drugs, or an order or formula issued by an out-of-state practitioner in compliance with §328-17.6.

§328-1 “Prescription drug” is defined as (1) Any drug required by federal or state statutes, regulations, or rules to be dispensed only upon a prescription, including finished dosage forms and active ingredients subject to section 328-16 or section 503(b) of the Federal Act; or (2) Any drug product compounded or prepared pursuant to a practitioner’s order.

III. COMMENTS ON THE HOUSE BILL

The Department recognizes that, under current practice, some nonprescription, over-the-counter, or nonlegend drugs are billed at significantly inflated prices when dispensed through the workers’ compensation system. Addressing these excessive charges is an important cost-containment goal, and this bill could assist in reducing unnecessary cost escalation.

However, clarification is needed to ensure that the measure targets inappropriate billing practices without restricting medically appropriate care.

A blanket prohibition may conflict with §386-21, which obligates employers to provide all reasonably needed medical care, services, and supplies. In many cases,

these drugs are the most appropriate treatment option.

The bill does not define “prescribe”. In practice, prescribing is not limited to issuing a written prescription, prescribing can also include providing medical direction or instruction as part of the treatment. Without clarification, the bill could be interpreted as prohibiting even basic clinical guidance, which is likely not intended and could hinder appropriate care.

The DLIR supports providers of service to direct an injured worker to take a nonprescription, over-the-counter, or nonlegend drug. This direction may be given orally, or in writing, and the injured worker may obtain the product from a retailer or be dispensed from the provider without a written “prescription”. This preserves clinical judgement while preventing inflated billing.

To balance cost containment with access to medically appropriate care, the Department recommends replacing the proposed subsection (a) and adding a new subsection (b) as follows:

- (a) A health care provider may dispense a nonprescription drug, over-the-counter drug, or nonlegend drug to an injured employee only if:
 - (1) The drug is clinically necessary for the treatment of the compensable injury; and
 - (2) The charge for the drug does not exceed the prevailing retail price generally available at major pharmacy chains within the State.
- (b) Nothing in this section shall prohibit a health care provider from recommending, advising, or directing an injured employee to obtain and use a nonprescription drug, over-the-counter drug, or nonlegend drug, whether orally or in writing, as part of medically appropriate treatment.

The DLIR respectfully urges the Committee to amend HB1648 as suggested to align payments with retail pricing and preserve provider guidance.



JOSH GREEN, M. D.
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STATE OF HAWAII | KA MOKU'ĀINA O HAWAII
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
KA 'OIHANA HO'OMŌHALA LIMAHANA
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Statement of
BRENNA H. HASHIMOTO
Director, Department of Human Resources Development

Before the
HOUSE COMMITTEE ON LABOR
Tuesday, February 17, 2026
9:00AM
State Capitol, Conference Room 309

In consideration of
HB1648, RELATING TO WORKERS' COMPENSATION

Chair Sayama, Vice Chair Lee, and members of the committee:

The Department of Human Resources Development (HRD) offers the following comments for HB1648.

The purpose of HB1648 is to prohibit health care providers from prescribing or dispensing nonprescription drugs, over-the-counter drugs, and nonlegend drugs for workers' compensation patients.

HRD agrees that the cost of medications, whether it be prescription or nonprescription drugs, has resulted in escalating costs in recent years and, as a result, controls are needed to address the impact to Hawai'i's workers' compensation system. Though HRD appreciates the intent of the measure, barring a health care provider from prescribing and dispensing nonprescription drugs, over-the-counter drugs, and nonlegend drugs could inadvertently lead to inflated medication costs if physicians must rely on prescription drugs, including those not FDA-approved, because the measure limits the health care provider's flexibility.

We are also concerned that the absence of a health care provider's involvement in medication management could lead to medication misuse or abuse with potential challenges of addiction and toxicity. Therefore, it is critical for health care providers to monitor and oversee their patients' use of all medications, prescription or nonprescription, to ensure patient safety.

Should this bill move forward, to limit the misuse of nonprescription drugs, over-the-counter drugs, and nonlegend drugs, while supporting the intent to control prescription costs, HRD recommends the amending the following language on page 2, lines 1-2.

“(a) No health care provider shall ~~prescribe or~~ dispense a nonprescription drug, over-the-counter drug, or nonlegend drug **or any non-FDA-approved drugs that have not undergone the FDA’s formal review for safety, effectiveness, or quality.**

We are available to answer any questions or provide further information as needed.

TESTIMONY OF MILIA LEONG

COMMITTEE ON LABOR
Representative Jackson D. Sayama, Chair
Representative Mike Lee, Vice Chair

Tuesday, February 17, 2026
9:00 a.m.

HB 1648

Chair Sayama, Vice Chair Lee, and members of the Committee on Labor, my name is Milia Leong, Executive Claims Administrator for HEMIC Insurance Managers, Inc., and Chair of the Workers' Compensation Policy Committee for Hawaii Insurers Council. The 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 forty percent of all property and casualty insurance premiums in the state.

Hawaii Insurers Council (HIC) **supports** this bill. As a part of a House Workers' Compensation Working Group comprised of stakeholders in the system including the Department, treating physicians, providers, plaintiff and defense attorneys, and insurers, this bill is a result of that collaboration.

This bill prohibits healthcare providers from prescribing or dispensing nonprescription drugs in workers' compensation cases. The purpose of this bill is to eliminate inflated charges by some providers and therefore reduce costs in the system.

HIC has had the opportunity to consider the recommended amendments of the Department prior to this hearing and if the Committee moves forward with their amendments, we do not object.

Thank you for the opportunity to testify.



841 Bishop Street, Suite 2250 | Honolulu, Hawaii 96813

Statement of

KRIS KADZIELAWA

Managing Director, Solera Integrated Medical Solutions

Before the

HOUSE COMMITTEE ON LABOR

Rep. Jackson D. Sayama, Chair Rep. Mike Lee, Vice Chair

Tuesday, February 17, 2026

9:00AM

State Capitol, Conference Room 309

In consideration of

HB1648 RELATING TO WORKERS' COMPENSATION

TESTIMONY IN OPPOSITION TO HB1648

Aloha Chair Sayama, Vice Chair Lee, and Members of the Committee:

My name is Kris Kadzielawa, and I am the Managing Director of Solera Integrated Medical Solutions, a medical payment integrity technology and services provider dedicated to ensuring fair, efficient, and transparent processes within Hawaii's workers' compensation system for insurers, employers, government agencies, and healthcare providers. For over 33 years, we have partnered with employers, claims teams, and government agencies to combat medical fraud and abuse. Currently, the big issue of contention stems from physician dispensing practices that inflate costs through repackaged or compounded drugs,

often at 10–100 times the price of standard pharmacy equivalents. These practices divert resources from injured workers’ recovery and burden employers with unnecessary expenses.

I appreciate the opportunity to testify in **opposition** to HB1648, while offering constructive observations to protect the system’s integrity.

Hawaii’s existing workers’ compensation framework under **HRS §386-21.7** is reasonable, fair, and effective in balancing the needs of injured workers with cost controls for employers. It broadly covers prescription drugs (including compounds and repackaged medications) and has worked very well for all stakeholders except those seeking to circumvent its safeguards through novel products and aggressive billing tactics.

HB1648 would prohibit health care providers from prescribing or dispensing nonprescription, over-the-counter (OTC), or nonlegend drugs for workers’ compensation patients, citing the absence of clear reimbursement rates that has allegedly led to inflated charges. The intent to prevent abuse is understandable. However, a blanket prohibition raises serious practical and policy concerns.

Physicians licensed under **HRS Chapter 453** — and specifically **HRS §453-1**, which defines the practice of medicine to include “the use of drugs and medicines” — possess the professional judgment and authority to prescribe the most appropriate, clinically indicated, and cost-effective treatment for injured workers. This includes FDA-approved OTC medications when they are equally effective and dramatically less expensive.

Why should a physician be prohibited from prescribing a safe, effective, FDA-approved OTC topical cream available for approximately \$9 if it provides equivalent therapeutic benefit to a non-FDA-approved compounded cream billed at \$800 or more? Clinical studies consistently show that topical pain compounds are not superior to over-the-counter FDA-approved alternatives. FDA-approved topical creams sell for as little as \$24 per 3 ounces versus \$2,400 or more for compounded versions that the FDA has never evaluated for safety or effectiveness.

Compounded drugs — whether produced under section 503A or 503B of the Federal Food, Drug, and Cosmetic Act — remain unapproved by the FDA. The 2012 national outbreak of contaminated compounded drugs (over 750 infections and more than 60 deaths) led Congress to enact the Drug Quality and Security Act, underscoring the inherent risks when products bypass FDA approval.

A prohibition on physicians prescribing OTC medications could inadvertently limit injured workers’ access to simple, safe, affordable, evidence-based care. It may also conflict with the core purpose of **HRS §386-21**, which requires medical care “as the nature of the injury

requires” under the direction of the treating physician, and with **HAR §12-15-55**, which addresses charges for prescribed drugs and supplies.

We respectfully recommend the following:

Limit physician dispensing to 30 days post-injury. Add a new subsection: “Physician dispensing shall be allowed for 30 days following the industrial injury. Thereafter, all prescription drugs shall be obtained through the employer’s Pharmacy Benefit Manager.” This single, targeted reform is the most effective way to eliminate long-term abuse of inflated AWP’s, promote PBM oversight and FDA approved, generic/OTC utilization, remove more than 90% of the bill-dispute burden on the Department of Labor, and save the State **\$3–5 million annually with another \$8-10 million of savings to insurers.** Without it, passage of HB2164 and other similar measures will add an additional **\$3–5 million per year** to the workers’ compensation budget over the next 24 months and require the Department to process double the current volume of bill disputes.

In my 33 years in the medical bill audit and payment integrity business, I have not encountered a single issue of contention regarding prescription drug bills outside the practice of physician dispensing. On the other hand, physician dispensers have attempted numerous strategies to bypass the cost controls in the current statute. Hawaii’s existing law is broad, fair, and works well for everyone except those who continue to invent novel ways around it. For example, HRS ties prescription drug reimbursement to the Average Wholesale Price (AWP) published in Redbook. Redbook does not verify the submitted AWP listing information for accuracy, as it only publishes the AWP reported by the drug manufacturer, compounder, repackager, or relabeler. When the AWP submitted for publishing by the drug manufacturer is deemed to NOT be the actual Average Wholesale Price of the drug, but rather an inflated, fictitious amount, the submission of such an inflated claim for payment under a medical benefit program may be considered a False Claim.

Hawaii’s current statute is broad, fair, and works well for everyone except those continually inventing new ways to skirt its protections. We urge the Committee to reject the outright prohibition in HB1648 and instead advance the targeted, evidence-based reform outlined above by limiting physician dispensing to 30 days post the date of injury. These changes will protect injured workers, control costs, reduce administrative burdens, and restore confidence in the system.

Mahalo for your consideration. I am available for questions and remain committed to working collaboratively toward solutions that benefit all stakeholders.

Kris Kadzielawa

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To: The Honorable Jackson D. Sayama, Chair
The Honorable Mike Lee, Vice Chair
House Committee on Labor

From: Mark Sektnan, Vice President

Re: **HB 1648 -Relating to Workers' Compensation
APCIA Position – Support, with Request for Amendments**

Date: Tuesday, February 17, 2026
9:00 a.m., Room 309

Aloha Chair Sayama, Vice Chair Lee and Members of the Committee:

The American Property Casualty Insurance Association (APCIA) is requesting amendments to HB 1648 relating to prescribing or dispensing nonprescription, over-the-counter (OTC), and non-legend drugs to workers' compensation patients.-the-counter (OTC), and nonlegend drugs to workers' compensation patients

The American Property Casualty Insurance Association (APCIA) is the primary national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA members represent all sizes, structures, and regions—protecting families, communities, and businesses in the U.S. and across the globe.

APCIA supports HB 1648, with the amendments recommended by the Hawaii Department of Labor and Industrial Relations.

The Legislature has identified that existing reimbursement rates for nonprescription and OTC drugs in the workers' compensation system are not clearly defined, which has allowed some providers to charge inflated amounts. These inflated charges, in turn, drive up the overall cost of workers' compensation insurance for employers across the state. HB 1648 directly addresses this issue by establishing a clear statutory prohibition and reducing opportunities for cost manipulation.

HB 1648 represents good governance: it closes loopholes, improves regulatory clarity, and protects both employers and employees from inefficiencies that undermine the system's intent. For these reasons, I respectfully urge the Committee to pass HB 1648 with the proposed amendments.



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February 16, 2026

Testimony in Opposition to HB1648 - Relating to Workers' Compensation

Dear Chair Jackson Sayama, Vice Chair Mike Lee, and the Committee on Labor:

My name is Dr. Scott J. Miscovich and I am a practicing physician in the State of Hawai'i. I respectfully submit testimony in opposition to H.B. 1648.

While I understand and appreciate the Legislature's intent to address inflated reimbursement rates for nonprescription or over-the-counter (OTC) medications in the workers' compensation system, the plain language of this bill is overly broad and creates significant unintended consequences that will hinder patient care.

As written, Section 2 of the bill states: "No health care provider shall prescribe or dispense a nonprescription drug, over-the-counter drug, or non-legend drug."

This language does not limit itself to prohibiting excessive markups or inappropriate dispensing practices. Instead, it categorically prohibits physicians from prescribing or dispensing any OTC medication for workers' compensation patients.

In clinical practice, physicians routinely prescribe OTC medications such as ibuprofen, acetaminophen, naproxen, antihistamines, topical agents, and other non-legend medications as part of standard, evidence-based care. In the workers' compensation context, prescribing an OTC medication allows the injured worker to obtain the medication at a retail pharmacy (e.g., Longs or other pharmacies) and receive appropriate reimbursement. It also ensures proper documentation, medical oversight, and continuity of care.

Under the current wording of H.B. 1648, even writing a prescription for an OTC medication such as ibuprofen would be prohibited. This would:

- Limit a physician's ability to direct appropriate first-line treatment
- Create unnecessary barriers for injured workers seeking reimbursement
- Disrupt standard medical documentation practices
- Potentially delay care or push providers toward prescribing stronger, legend medications instead

HB1648

February 16, 2026

Page 2

I strongly believe the intent of this bill was to address cost inflation related to dispensing or markup practices—not to prohibit physicians from prescribing medically appropriate OTC medications altogether. However, as drafted, the language is prohibitive rather than regulatory.

If the goal is to prevent excessive reimbursement or dispensing markups, the statute should be narrowly tailored to address reimbursement methodology rather than imposing a blanket prohibition on prescribing or dispensing.

For these reasons, I respectfully request that H.B. 1648 be substantially amended to clarify its intent and limit its scope, or alternatively, that the bill be deferred.

Thank you for the opportunity to provide testimony.

Respectfully submitted,



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**PREMIER
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To: Rep. Jackson D. Sayama, Chair
Rep. Mike Lee, Vice Chair
Members of the Committee on Labor

Date: Tuesday, February 17, 2026

Time: 9:00 a.m.

Place: Conference Room 309

Support for INTENT of HB1648

I strongly support the INTENT of HB1648, but only with needed amendments. The bill, as currently drafted, prohibits health care providers from prescribing or dispensing nonprescription drugs, over-the-counter drugs, and nonlegend drugs for workers' compensation patients. While the intent of this bill is to curb potential abuses with the pricing of these drugs, such drugs may be in fact required for an injured worker's recovery. Instead, this bill should be revised to establish a maximum payment rate of cost plus forty per cent for nonprescription drugs, over-the-counter drugs, or nonlegend drugs for workers' compensation purposes, subject to certain conditions. I have attached a proposed HD1 for your consideration.

The purpose of such a bill would be to establish a reasonable reimbursement rate for OTC drugs for injured workers, equivalent to the payment rate for supplies set forth in HAR 12-15-55(d), and comparable to the payment rate for prescription drugs (140% of Original Manufacturer's Average Wholesale Price) stated in HRS 386-21.7. Currently, because of the lack of regulatory guidance, OTC drugs are being billed at very inconsistent rates, resulting in confusion between medical providers and insurers alike, and leaving the door open for potential abuses. In some cases, OTC drugs are being billed as prescription drugs, resulting in outrageous pricing.

Under current law, equivalent generic drug products are supposed to 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 or if no generic equivalent is available. Unfortunately, certain providers are not substituting cheaper equivalent generic drug product, and in some cases, are prescribing OTC drugs that have been given a National Drug Code on Redbook. This is causing abuses in the worker comp system, leading to unnecessary costs to employers. Additionally, this practice disadvantages providers who do not participate in billing OTC medications as prescription drugs. I have many redacted examples to share, but as a summary:

Work Comp HCFA Bills for OTC products: OTC billing as a RX

| Product Name | Active Ingredient | size | Manufacture | OTC beint billed as RX | Cost per PATCH |
|---------------------|--------------------------------|-------------|--------------------|-------------------------------|-----------------------|
| Trubexa Patch | Lidocaine 4.75% | 32 per box | Strand | \$ 2,232.96 | \$ 69.78 |
| Lidothol Patch | Lidocaine 4% | 15 per box | Terrain | \$ 1,199.30 | \$ 79.95 |
| Lenza Patch | Lidocaine 4% | 15 per box | Sola | \$ 1,091.97 | \$ 72.80 |
| Lidopro Ointment | Lidocaine 4% | 121g | Terrain | \$ 1,880.54 | |
| Lidopro Patch | Lidocaine 4% | 15 per box | Terrain | \$ 2,257.92 | \$ 75.26 |
| Diclona Gel | Lidocaine 4.5% + Diclofenac 1% | 3.5oz | Terrain | \$ 1,691.68 | |

Available online: OTC No prescription needed

| Product Name | Active Ingredient | size | Manufacture | OTC Online Price | Cost per PATCH |
|----------------------------|------------------------------|-------------|--------------------|-------------------------|-----------------------|
| Lidocaine 4% Patch | Lidocaine 4% | 20 per box | curist | \$ 18.00 | \$ 0.90 |
| Lidocaine 5% Cream | Lidocaine 5% | 170g | curist | \$ 24.00 | |
| Diclofenac Sodium 1% Gel | Diclofenac 1% | 150g | curist | \$ 14.99 | |
| Lidocaine Numbing Cream 5% | Lidocaine 5% | 155g | Welmate | \$ 22.65 | |
| Diclofenac Sodium 1% Gel | Diclofenac 1% | 150g | Welmate | \$ 16.30 | |
| Welmate Bundle | Lidocaine 5% + Diclofenac 1% | 155g/150g | Welmate | \$ 39.90 | |
| Numb520 Spray | Lidocaine 5% | 72ml | Ebanel | \$ 19.99 | |
| Salonpas Lidocaine Plus | Lidocaine 4% | 7 per box | Hisamitsu | \$ 12.33 | \$ 1.76 |

I would suggest, however, that this Committee consider amending this bill to clarify whether there is an obligation for the employer to reimburse providers for applicable Hawaii general excise tax.

For over four years, I have diligently been working to address this issue, engaging with various stakeholders to forge a consensus. It's worth noting that any opposition to this measure paradoxically aims to curtail the very abuses that this bill seeks to address. By passing this measure, you would enable stakeholders to continue their collaborative efforts towards an effective solution to this very real problem. I urge you not to let the pursuit of perfection impede the implementation of a good and necessary step forward.

Thank you for your consideration.

Cathy Wilson

A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION.

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

SECTION 1. The legislature finds that the State's existing reimbursement rates for nonprescription drugs, over-the-counter drugs, or nonlegend drugs for workers' compensation are not clearly provided. The legislature further finds that this omission has led some to charge inflated rates for these drugs, which drives up the cost of workers' compensation insurance policies.

Accordingly, the purpose of this Act is to establish:

- (1) Payment rates for nonprescription drugs, over-the-counter drugs, or nonlegend drugs for workers' compensation purposes; and
- (2) Requirements for the authorization of such payments.

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

"§386- Nonprescription, over-the-counter, or nonlegend drug payments. (a) Payment for nonprescription drugs, over-the-counter drugs, or nonlegend drugs shall not exceed cost plus forty per cent.

(b) Payment shall not be authorized under this section unless the nonprescription drug, over-the-counter drug, or nonlegend drug has been clinically established as necessary by the provider, or a duly

authorized representative, to treat the injured employee for a work injury.

(c) Providers may seek reimbursement for any applicable Hawaii general excise tax.

(d) For purposes of this section:

"Nonprescription drug", "over-the-counter drug", or "nonlegend drug", has the same meaning as provided in section 328-1.

"Provider" means the physician dispensing the nonprescription drug, over-the-counter drug, or nonlegend drug."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2026.



To: Rep. Jackson D. Sayama, Chair
Rep. Mike Lee, Vice Chair
Members of the Committee on Labor

Date: Tuesday, February 17, 2026
Time: 9:00 a.m.
Place: Conference Room 309

Support for INTENT of HB1648

Dear Chair Sayama, Vice Chair Lee, and Members of the Labor Committee,

My name is **Gary Okamura, MD**, an orthopedic surgeon who has cared for Hawai'i's injured workers for decades and currently serves as President of the **Work Injury Medical Association of Hawai'i (WIMAH)**. I strongly support the intent of HB1648 because over-the-counter (OTC) and other nonprescription drugs should not be reimbursed in the same way as prescription (RX) medications in Hawai'i's workers' compensation system. The current lack of clear limits has allowed some OTC products to be treated as if they were prescription drugs, generating reimbursement amounts that are many times higher than the price an injured worker would pay by purchasing the same item over the counter or online.

This practice blurs the line between true prescription drugs and OTC products, especially with topicals that exist both as prescription-strength medications and as OTC formulations. When an OTC item is assigned a National Drug Code and billed like an RX drug, it creates confusion for adjusters, providers, and patients, and drives up costs for employers without improving clinical outcomes.

Before the statutes were revised in 2014, Hawai'i workers' compensation was commonly interpreted so that injured workers could simply purchase needed OTC items and submit receipts to their adjuster for reimbursement, rather than having those products dispensed and billed at elevated "prescription" rates. HB1648 is an opportunity to restore that common-sense approach in a modern, transparent framework.

I therefore support amending HB1648 along the lines of the proposed HD1 concept to:

- Establish a clear maximum reimbursement level for nonprescription, OTC, and nonlegend drugs used in workers' compensation—such as cost plus forty percent—which is consistent with the structure used for supplies in HAR 12-15-55(d) and comparable in concept to the prescription drug payment methodology in HRS 386-21.7.
- Require that any OTC or nonlegend drug reimbursed under workers' compensation be clinically established as necessary for the work injury by the treating provider or their designee, so that injured workers retain access to appropriate OTC therapies while abusive pricing is curtailed.
- Clarify that simply assigning an NDC or using a product topically in a work comp claim does not convert an OTC item into a prescription drug for reimbursement purposes.

These changes would:

- Reduce unnecessary and sometimes outrageous charges for OTC products that can be obtained at far lower retail prices.
- Protect employers and the overall system from inflated costs while preserving reasonable access to OTC items when they are clinically appropriate.
- Create a level playing field so that providers who do not engage in billing OTC products as prescription drugs are not disadvantaged compared to those who do.



I also encourage the Committee to consider clarifying in the bill that providers may seek reimbursement for applicable Hawai'i general excise tax, consistent with the language in the proposed HD1 draft.

HB1648, with these amendments, is a practical, necessary step toward closing a well-documented loophole in workers' compensation reimbursement while still allowing injured workers to obtain beneficial OTC therapies. I respectfully urge you to pass HB1648 with amendments that clearly cap OTC reimbursement and prevent OTC products from being treated as full-price prescription drugs.

Thank you for your consideration.

With aloha,

Gary Okamura, MD

Orthopedic Surgeon

President, Work Injury Medical Association of Hawai'i (WIMAH)