NEIL ABERCROMBIE
GOVERNOR OF HAWAII

SUNSHINE P.W. TOPPING
INTERIM DIRECTOR

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

February 27, 2011

TESTIMONY TO THE
HOUSE COMMITTEE ON FINANCE

For Hearing on Monday, February 28, 2011
3:30 PM, Conference Room 308

BY

SUNSHINE P.W. TOPPING
INTERIM DIRECTOR

Written Testimony Only

House Bill No. 1243, HD2
Relating to Repackaged Drugs and Compound Medications

TO CHAIRPERSON MARCUS R. OSHIRO AND MEMBERS OF THE COMMITTEE:

The purpose of H.B. No. 1243, HD2 is to amend Section 386-21, Hawaii Revised Statutes, so as to regulate the amount that can be charged for repackaged prescription drugs and compound medications.

The Department of Human Resources Development is in strong support of this bill. We have found that, in many instances, the amounts being charged for repackaged prescription drugs and compound medications were more than 200% greater than what was being charged by retail pharmacies and Health Maintenance Organizations for the same prescriptions. Under this bill, we would also be permitted to contract for a price lower than the amount provided for in the fee schedule adopted by the Director of Labor.

This provision, along with regulating the amount that can be charged, will reduce medical costs without affecting an injured employee's access to required medications.

Thank you for the opportunity to testify on this measure.

ECD/vp/sk

Hawaii Injured Workers' Alliance

715 South King Street

Honolulu, Hawaii 96813

House Bill 1243

Relating to Repackaged Drugs and Compound Medications

Committee on Finance

February 28, 2011

3:30 p.m. Room # 308

Dear Chairman Oshiro and fellow committee members,

I come before to testify against HB 1243 HD 2.

The House Bill claims there are loop holes in the law and this will fix those loops holes. I believe that is far from the truth. I have been informed the draft of this bill was written by the employees of HEMIC. Their true intention is to eliminate or minimized Doctors from dispensing drugs.

Their claim that they want doctor to continue to dispense medicine is not true. They are trying to eliminate doctors from dispensing by economically forcing them out of being able to afford to do so.

By changing the state's reimbursement formula it will be unaffordable for doctors to dispense drugs. This will also cause many doctors to withdraw from practicing workers' compensation. We are at a point that Hawaii is short 600 doctors, but in the workers' comp area this has multiplied many times more. On the island of Hawaii we have less than a handful of doctors providing workers' comp service. With fewer doctors you don't have choices, competition and good service. I believe that HEMIC knows this and would love this to happen so they could control the market.

The cost of drugs is also not on a level playing field. HEMIC utilize PBMs (pharmacy program), such as CompToday, which receives rebates on drugs. This gives them a great advantage compared to the Doctors who dispense drugs from their office who don't get to enjoy these "rebates". If doctors receive rebates it's considered "kickbacks", why not the same for PBMs? They don't pay the valid claims submitted to them unless you have entered into a "special discounted reimbursement". HEMIC employees have said that doctors that do Workers' Comp in Hawaii and dispense drugs have been gouging the system. I have asked them for proof by documentation, to this date nothing has come forward. It seems that HEMIC wants to yell fire when there is NO fire. If you pass this bill you will see price gouging from HEMIC.

When a workers' comp doctor dispenses drugs from his or her office, the injured worker has the **guarantee** of receiving all drugs needed to recover from his or her injury. When an injured worker has to have their prescription filled at a pharmacy the guarantee drops to down to 70 percent of the injured workers' getting their drugs. By having doctors dispense drugs from their office there is a greater and earlier rate of recovery of injured workers because the injured worker is taking their drugs from the first day. This is not guaranteed when they have to go to a pharmacy or to the insurance company's participating pharmacy program.

HEMIC seems hell bent on controlling workers' comp market. Here is a company that was established by the legislature to HELP and now it seems to have turn into the 800 pound TOAD. HEMIC has assets of at least 2 BILLION dollars but at the same time it has at least one vendor that they have not paid in over 180 days, the billed amounts to over 130, 000 dollars.

In the last few days, the Director of Labor, Dwight Takamine has received more information regarding House Bill 1243 HD2 and is now no longer testifying in support of this bill.

I ask Chairman Marcus Oshiro and the members of the House Finance Committee to hold House Bill 1243 HD2.

I also suggest that we have and AUDIT of HEMIC which has not had one since its inception. This will insure that the 800 pound TOAD has been in compliance with all State of Hawaii laws.

Mahalo,

George M. Waialeale

Executive Director

Hawaii Injured Workers' Alliance

HAWAII INSURERS COUNCIL
A trade association of property and casualty insurance companies

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Alison Powers
Executive Director

TESTIMONY OF LINDA O'REILLY

HOUSE COMMITTEE ON FINANCE
Representative Marcus R. Oshiro, Chair
Representative Marilyn B. Lee, Vice Chair

Monday, February 28, 2011
3:30 p.m.

HB 1243, HD2

Chair Oshiro, Vice Chair Lee, and members of the Committee, my name is Linda O'Reilly, Workers' Compensation Claims Manager at First Insurance, testifying on behalf 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 40% of all property and casualty insurance premiums in the state.

Hawaii Insurer Council **supports** HB 1243, HD2 which would restrict markups of repackaged prescription drugs and compound medications to what is currently authorized for retail pharmacies under state law.

Hawaii's current reimbursement rate for pharmaceuticals is already the highest in the nation for both brand and generic products. The state fee schedule is AWP + 40%, with Redbook being cited as the pricing source. To demonstrate the markups, Exhibit 1 lists commonly dispensed medications that were re-packaged and re-labeled from a physician's office that specializes in the treatment of Workers' Compensation injuries. Exhibit 2 lists the same medication with the applied Hawaii fee schedule reimbursement rate.

Exhibit 3 lists commonly dispensed compound medication and the charges national observers have seen associated with them. Compound medications present their own

unique challenge because as their name suggest, compound medications are a combination of several drug products, and do not have a unique National Drug Code (NDC). As a result if left unregulated, compounding pharmacies can continue to create "dummy" NDCs and inflate charges.

States of California, Arizona, and Mississippi have experienced abuse until markups on repackaged prescription drugs and compound medications were regulated. Since Hawaii's reimbursement rates are already the highest in the nation, we respectfully request your support of HB 1243, HD2, which would restrict unreasonable increases of prescription drug costs to our people and business communities.

Thank you for the opportunity to testify.

Exhibit 1

AWP Comparisons

Drug	QTY	Re-Packaged AWP	Common Retail Pharmacy AWP	% of Mark Up
ACETAMI/CODE 300/30MG	60	$35.78	$17.83	100.7%
ACETAMI/CODE 300/60MG	60	$69.19	$56.20	23.1%
ACETAMINPHEN/CODE 300/30MG	30	$17.80	$8.91	100.7%
ALPRAZOLAM .5MG	30	$49.02	$25.33	93.5%
CELEBREX 200MG	30	$166.16	$132.92	25.0%
DIAZEPAM 5MG	30	$102.70	$5.94	1627.9%
DOCUSATE SODIUM 100MG	30	$39.14	$5.94	558.5%
ETODOLAC 50MG	30	$51.18	$45.04	13.6%
FLUOXETINE HCL 10MG	30	$185.55	$74.13	150.3%
FLUOXETINE HCL 20MG	30	$190.32	$80.04	137.8%
GABAPENTIN 300MG	30	$57.98	$39.89	45.4%
GABAPENTIN 300MG	120	$231.99	$159.55	45.4%
GABAPENTIN 600MG	30	$98.63	$75.60	30.5%
GABAPENTIN 600MG	60	$220.29	$151.20	45.7%
GABAPENTIN 600MG	120	$440.59	$302.40	45.7%
HYDRO/APAP 10/650MG	30	$52.31	$15.96	227.8%
HYDRO/APAP 10/650MG	60	$104.62	$31.92	227.8%
HYDRO/APAP 5/500MG	30	$34.49	$12.58	174.7%
HYDRO/APAP 5/500MG	60	$68.97	$25.11	174.7%
HYDROC/APAP 5/500MG	120	$137.94	$50.22	174.7%
HYDROC/APAP 7.5/500MG	30	$43.11	$15.45	179.1%
HYDROC/APAP 7.5/500MG	60	$86.22	$30.90	179.1%
HYDROCODONE/APAP 7.5/750MG	30	$38.54	$10.67	261.4%
IBUPROFEN 400MG	30	$8.84	$5.15	71.6%
IBUPROFEN 400MG	60	$17.67	$10.30	71.5%
IBUPROFEN 800MG	90	$39.33	$27.43	43.4%
LUNESTA 2MG	30	$251.10	$200.88	25.0%
LUNESTA 3MG	30	$251.10	$200.88	25.0%
MELOXICAM 15MG	30	$205.84	$145.35	41.6%
MELOXICAM 7.5MG	30	$134.82	$94.94	41.8%
METHOCARBAMOL 500MG	30	$22.23	$15.24	45.9%
NAPROXEN 500MG	30	$65.94	$33.78	95.2%
NAPROXEN 500MG	60	$131.88	$67.56	95.2%
PROMETHAZINE 25MG	30	$16.81	$14.43	16.5%
RANITIDINE 150MG	60	$244.96	$88.80	175.9%
TIZANIDINE 4ML	30	$65.22	$41.75	56.2%
TRAMADOL 50MG	60	$93.27	$50.03	86.4%
TRAMADOL 50MG	120	$186.54	$100.06	86.4%
TRAZODONE HCL 50MG	30	$64.13	$13.24	384.3%
TRIAZOLAM .25MG	30	$56.40	$20.25	178.6%
ZOLPIDEM 10MG	30	$167.01	$137.22	21.7%

Exhibit 2

Hawaii State Fee Schedule applied

Drug	QTY	Re-Packaged AWP at Fee Schedule	Common Retail Pharmacy AWP at Fee Schedule	% of Mark Up
ACETAMI/CODE 300/30MG	60	$50.09	$24.96	100.7%
ACETAMI/CODE 300/60MG	60	$98.87	$78.68	23.1%
ACETAMINPHEN/CODE 300/30MG	30	$25.04	$12.48	100.7%
ALPRAZOLAM .5MG	30	$68.63	$35.48	93.5%
CELEBREX 200MG	30	$232.62	$186.09	25.0%
DIAZEPAM 5MG	30	$143.78	$8.32	1627.9%
DOCUSATE SODIUM 100MG	30	$54.80	$8.32	558.5%
FLUOXETINE HCL 10MG	30	$259.77	$103.78	150.3%
FLUOXETINE HCL 20MG	30	$266.45	$112.06	137.8%
ETODOLAC 50MG	30	$71.65	$63.06	13.6%
GABAPENTIN 300MG	30	$81.17	$55.84	45.4%
GABAPENTIN 300MG	120	$324.79	$223.37	45.4%
GABAPENTIN 600MG	30	$138.08	$105.84	30.5%
GABAPENTIN 600MG	60	$308.41	$211.66	45.7%
GABAPENTIN 600MG	120	$616.83	$423.36	45.7%
HYDRO/APAP 10/650MG	30	$73.23	$22.34	227.8%
HYDRO/APAP 10/650MG	60	$146.47	$44.69	227.8%
HYDRO/APAP 5/500MG	30	$48.29	$17.58	174.7%
HYDRO/APAP 5/500MG	60	$96.56	$35.16	174.7%
HYDROC/APAP 5/500MG	120	$193.12	$70.31	174.7%
HYDROC/APAP 7.5/500MG	30	$60.35	$21.63	179.1%
HYDROC/APAP 7.5/500MG	60	$120.71	$43.25	179.1%
HYDROCODONE/APAP 7.5/750MG	30	$53.96	$14.93	261.4%
IBUPROFEN 400MG	30	$12.38	$7.21	71.6%
IBUPROFEN 400MG	60	$24.74	$14.42	71.5%
IBUPROFEN 800MG	90	$55.06	$38.40	43.4%
LUNESTA 2MG	30	$351.54	$281.23	25.0%
LUNESTA 3MG	30	$351.54	$281.23	25.0%
MELOXICAM 15MG	30	$288.16	$203.49	41.6%
MELOXICAM 7.5MG	30	$188.47	$132.91	41.8%
METHOCARBAMOL 500MG	30	$31.12	$21.34	45.9%
NAPROXEN 500MG	30	$92.32	$47.29	95.2%
NAPROXEN 500MG	60	$184.63	$94.58	95.2%
PROMETHAZINE 25MG	30	$23.53	$20.21	16.5%
RANITIDINE 150MG	60	$342.94	$124.32	175.9%
TIZANIDINE 4ML	30	$91.31	$58.45	56.2%
TRAMADOL 50MG	60	$130.58	$70.04	86.4%
TRAMADOL 50MG	120	$261.16	$140.08	86.4%
TRAZODONE HCL 50MG	30	$89.78	$18.54	384.3%
TRIAZOLAM .25MG	30	$78.96	$28.34	178.6%
ZOLPIDEM 10MG	30	$233.81	$192.11	21.7%

Exhibit 3

Commonly dispensed Compound Medications produced by compounding pharmacies and associated Charges

Dummy NDC	Compound	Billed Charge	AWP + 40%
99999-9999-99	MEN 1% CAM .5% CAP .05% 60GM COMPOUND	$223.83	$27.34
99999-9999-99	LIDOCAINE 10% GEL, 60GM	$219.35	$16.09
99999-9999-99	MEN 1%, CAM 0.5%, CAPS 0.05% 60GM	$226.07	$30.18
99999-9999-99	MEN 1% CAM .5% CAP .05% 10GM COMPOUND	$53.30	$6.06
99999-9999-99	MEN 1% CAM .5% CAP 0.05% 120GM COMPOUND	$291.00	$54.73

HEMIC

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Hearing Date/Time: February 28, 2011 (3:30 PM)

The Honorable Marcus R. Oshiro, Chair
The Honorable Marilyn B. Lee, Vice Chair
House Finance Committee
STATE CAPITOL
Conference Room 308
415 South Beretania Street
Honolulu, Hawaii

By Web: www.capitol.hawii.gov/emailtestimony

Re: H.B. 1243, HD2 – Relating to the Repackaged Drug and Compound Medications Bill

Dear Chair Oshiro, Vice Chair Lee, and Members of the Finance Committee

My name is Paul Naso. I am the General Counsel of the Hawaii Employers' Mutual Insurance Company, Inc. ("HEMIC"). I am here today on behalf of HEMIC to testify in strong support of H.B.1243, HD2.

I. UNDERSTANDING THE REPACKAGING PROBLEM

"Repackaging" is the practice of breaking a bottle of a large quantity of drugs down to several bottles of smaller quantities. These medications are identified by a number called an NDC (National Drug Code) number.

In 1972, congress enacted the Federal Drug Listing Act. The Federal Drug Listing Act required all registered drug establishments to provide the Food and Drug Administration (FDA) with a current list of all drugs manufactured, prepared, propagated, compounded, or processed by it for commercial distribution.

The significance of this Act was its broad classification of the term "Manufacturer" to include non-manufacturers including repackagers. While this may have been appropriate within the scope and intended purpose of the Drug Listing Act, it has caused the problem that we are facing today.

Because of the FDA's "manufacturing" classification, a repackager (who, again, does not actually manufacture the drugs) has the ability to re-label an existing product with the repackager's own National Drug Code number identifying them as the manufacturer for the product delivered in the bottle. More important, because of its manufacturing classification and right to create a new NDC number, *re-packagers can establish a new wholesale price for the same product*.

So what does that mean? That means if an original manufacturer produces a pill and sets a price (Average Wholesale Price) at, say, $.50 per pill, the repackager can simply relabel bottles of the same pill with a new NDC number and can and has set a new Average Wholesale Price. We have seen instances in Hawaii where a repackager has unreasonably and unjustifiably increased the per pill prices by 1627%.

Now, if the State in setting the fee schedules simply made a distinction between the original manufacturer's AWP and the repackager's AWP, it could address the repackaging problem.

Unfortunately, in its present version, Hawaii law does not make that distinction and simply requires the drug reimbursement rate to be the AWP + 40%, and therein lies the problem. Under the present statutory scheme, repackagers can create their own prices without justification and have used this ability to massively increase profits for the sale of drugs under Hawaii's workers' compensation fee schedule. In states where the repackaging problem was not addressed quickly, repackaged drugs became a major profit center for those involved in selling the repackaged drugs. In Hawaii, repackagers are only now gaining a foothold, after having been shut down in California, Arizona, and Mississippi, among other states.

H.B. 1243, HD2 simply makes it clear that the original manufacturer's average wholesale price (AWP) must be used as the basis when calculating reimbursements for drugs under Hawaii's workers' compensation fee schedule (i.e., 100% of the original manufacturer's AWP plus 40% profit).

II. THE COMPOUND MEDICATION ISSUE

As with repackaging, physicians often contract with a company that specializes in producing compound medication in large quantities and provides a supply of these compounded medications for the physician to dispense out of their office setting.

We note that although compounded medications are generally a more sophisticated version of repackaging, some compound medications may be medically necessary. That being said, compounded medications present a challenge in how they are reported and identified for billing purposes.

Unlike repackaged drug manufacturers who create a unique National Drug Code (NDC), compound medications do not have unique NDCs, as they are the combination of several drug products – each with its own NDC.

So when billing them to a payer, compounds are often identified with a "dummy" NDC of all 9s, (99999-9999-99) with an abbreviated description of the combination of products used in the production of the compound medication.

Since there is no assigned NDC and thus no Average Wholesale Price reported to a pricing source, if a state's workers' compensation fee schedule statutes or administrative rules are not clear in defining compound medications, compounding pharmacies can exploit this ambiguity to their advantage by unreasonably and unjustifiably marking up the costs of such medications.

III. H.B. 1243, HD2 IS A COST CONTAINMENT MEASURE

By helping to contain unreasonable and unjustifiable increases in prescription drug costs H.B. 1243, HD2 is a cost containment measure.

The unregulated practice of marking up repackaged prescription drugs affects everyone. It doesn't just affect insurance companies; it unreasonably and unjustifiably drives up the cost of prescription drugs for all self-insured entities, including the State of Hawaii, all of the counties in the state, and self-insured companies such as Marriott and Safeway. Ultimately, failing to contain the costs of repacked drugs and compound medications will have a significant effect on employers as their lost cost ratios rise, raising premiums as well.

Finally, a recent study by the National Council on Compensation Insurance, ("NCCI") Inc. shows on a state by state basis the substantial cost increases experienced by states that have failed to contain repackaged prescription drug costs.

IV. REPACKAGED DRUGS/COMPOUND MEDICATIONS IS A NATIONWIDE PROBLEM

As noted above, the problem that this legislation seeks to address is a problem facing many states. Several states, such as California, Arizona, and Mississippi, have already refined their statutes and administrative rules to demarcate the difference between original manufacturers and repackagers, clearly defined compound medications, and ultimately contained the unreasonable and unjustifiable increase in prescription drug costs caused by repackaged drugs and compound medications.

The experience in other states has also shown that when a state government closes the repackaging loophole, repackaging firms resort to compound medications to unreasonably inflate drug costs and their profit margins. Therefore, H.B. 1243, HD2 seeks to address both practices at the same time.

V. DISPELLING MYTHS

The testimony above describes what this bill is about. During previous testimony before committees in the House and Senate, certain opponents have attempted to create a

smokescreen by raising issues unrelated to this bill and attacking HEMIC directly with false and misleading charges. They have also attempted to characterize this bill as a "HEMIC" bill in an effort to further confuse legislators. To clarify what is real from what is not, I submit the following points:

1. THIS IS NOT A HEMIC BILL

This bill is supported by a broad coalition that ranges from government to business and from self insureds to insurers (including HEMIC), all supporting the concept of fairness and restricting unreasonable and unjustifiable increases in prescription drug costs.

2. THIS BILL IS NOT ABOUT THE OVERALL COMPENSATION OF DOCTORS WITHIN THE WORKERS' COMPENSATION SYSTEM

At the previous hearing on H.B. 1243, HD2, opponents of the bill argued that it will severely impact the ability of doctors to earn their living. H.B. 1243, HD2, however, deals strictly with containing the unreasonable and unjustifiable increase in the cost of prescription drugs caused by repackaged drugs and compound medications. It does not deal at all with doctors' compensation under the workers' compensation system issues.

In any case, it should be noted that the DLIR is required by law to update the Hawaii Workers' Compensation Supplemental Fee Schedule for physician reimbursement at least every three years or annually, as required. So remedies are already in place.

As to the alleged severe impact on workers' compensation physicians continuing to work in Hawaii, abusive repackaging and compound medication re-pricing practices to create a new profit center is done by only a small group of Hawaii physicians at this point in time.

Finally, if you think about the logic behind their argument, it appears the opposition is saying that because they are unhappy with the current compensation rates for their services within the workers' compensation system, we should support continued abuse and price gouging in the prescription drug area.

3. THIS BILL DOES NOT IMPACT PHYSICIAN DISPENSING

This bill is <u>not</u> about physician dispensing. We only raise the issue because it was a problem in the California repacking battle because the repackaging practice had developed to a much greater degree and had become a major profit center for California workers' compensation physicians. Because of that, the cost-containment effort in California included doing away with the entire practice of physician dispensing.

That is not the case here in Hawaii. Although the repackagers have established a beachhead, they have not yet fully established their business model in the islands.

Therefore, H.B. 1243, HD2 does not alter, revise or in any way impact the practice of physician dispensing of prescription drugs. In fact, HEMIC supports physician dispensing. We believe it is a good practice which benefits the treatment of injured workers.

We note that most workers' compensation doctors dispense medications that are not repackaged and getting reimbursed at AWP plus 40% profit.

There is plenty of room in Hawaii's generous prescription drug fee schedule to allow physicians to make a fair profit on the medications they disperse. But distorting the fee schedule as I described earlier is simply an abuse; an abuse that this legislation will effectively curtail.

4. THIS BILL DOES NOT ECONOMICALLY DISADVANTAGE PHYSICIANS

Some opponents to this bill have argued that the effect of this bill is to "price out" the small physician in favor of the "Longs Drugs and Costco." Specifically, the retail pharmacy has better buying power to negotiate lower acquisition costs due to large volume purchases of product over a small-scale dispenser.

However, this argument is based on their assertion that the dispensing physician is negotiating directly with the manufacturer for their product. While it is true that Longs can negotiate significant discounts, **the small-scale dispenser actually purchases their drugs from a drug re-packager who purchases large quantities of product from the manufacturer and is able to leverage their volume for similar discounts as Longs.** The prices a small-scale dispenser pays the re-packager are significantly less than what the opponents of this bill would lead you to believe.

There is also the claim that physician dispensaries are limited in the market they serve, i.e. workers compensation and No Fault patients. However, the reality is physician dispensaries can service all market segments like commercial, group health, Medicare and Medicaid. However, **they chose not to, because they are required to comply with contractual and reimbursement terms of the payers in these more "traditional" markets.**

To summarize, the opponents argue that the proposed bill will require physicians to economically compete with retail pharmacies which is not conducive to "insuring providers and suppliers who care for Hawaii's injured workers are fairly reimbursed." However, their claim fails to acknowledge the relationship the re-package suppliers have with the manufacturers and the discounts that are passed to the doctors.

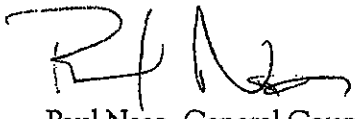
5. THIS BILL WILL NOT AFFECT A WORKERS RIGHT, OR ACCESS TO, MEDICAL TREATMENT FOR THEIR INJURIES.

H.B.1243, HD2 is about preventing price gouging in the prescription drug arena. It deals exclusively with reimbursement and does not affect, in any way, an injured worker's right or access to medical treatment for his or her injuries. As there is no co-pay in workers' compensation, this bill simply does not affect the injured worker.

At the end of the day, this bill only addresses and impacts the price gouging of prescription drugs period.

We respectfully request that you support and pass H.B. 1243, HD2.

Sincerely,



Paul Naso, General Counsel
Hawaii Employers' Mutual Insurance Company, Inc.

PN:rm

QCP

QUALITY CARE PRODUCTS, LLC
6920 Hall St. Holland, OH 43528
Phone: 800-337-8603 Fax: 800-947-7921

Attn: Hawaii Legislature and Honorable Members of the Committee on Finance

Opposing: **HB1243 Relating to Repackaged Drugs and Compound Medications**

Dear Rep Marcus Ohsiro, Chair and Rep Marilyn Lee, Vice Chair and Committee members,

Supporters of HB1243 would like you to think that the need for Repackers to increase the AWP is not necessary. Here are just a few of the things we, as FDA and DEA-licensed Re-packagers do.

First and foremost, it's pretty obvious from data that we've seen that it makes sense to allow Occupational Health, and Board-Certified Anesthesiologists, Orthopedists, Neurologists, Psychiatrists, and PM&R Specialists to dispense directly to Patients at the Point-of-care because it increases compliance by 30%. (i.e., the percentage of prescriptions that actually are filled) This is especially important when a patient is first injured in order to get them to MMI (Maximum Medical Improvement) as quickly (and, may I add, as inexpensively) as possible. When patients have to go out-of –pocket, 30% of the scripts go unfilled, the road to recovery and MMI is inhibited, and costs rise, sometimes exponentially. That's why it's not always easy for Legislators to determine their least-expensive option. Most people can understand that it's much less expensive for a Physician to dispense the exact, re-packaged medication they need directly to a patient at the Point-of-Care than it is to have that patient go with an unfilled prescription, which may lead to a very expensive ER visit, or even admitted to the hospital at a cost of thousands of dollars per day.

The DEA has weighed in on the benefit of using Re-packagers, as well, in their battle against Diversion. There are only 400 DEA inspectors in the USA, and so they rely on us to perform due-diligence on anyone we sell to because they don't have the manpower to do so. The DEA tells us that we are "their first line of defense against diversion," and work with us to ensure that our due-diligence process is robust. Every month it seems that we turn down potential new clients because they don't meet our rigorous rules, as set forth by the DEA's mandate. Certainly Hawaii is better off than, say, FL, but this battle is a never-ending one, and the more people enlisted in the fight, the better.

Last, but not least, is our commitment to accuracy, which is also mandated by the FDA. Our Mission Statement begins with, "First Do No Harm," and we begin every meeting with the reading of that Statement. From FDA's mandate, we must and we do follow CGMP-Current Good Manufacturing Practices. That's the same guideline that the original pill's manufacturer

adheres to. Our company employs 6-Sigma Quality processes, as well. Our process for filling each bottle involves over 40 inspections, from Receiving the drug properly, to creating the proper Label for the med, choosing the correct bulk-bottle to package it from in our Air-Controlled Clean Room by our gowned-packaging personnel, to our Quality Control Inspection, and even to our shipping department. The FDA inspects us often-usually bi-annually.

That Receiving Process begins with a Pedigree. I.e. we do NOT buy any products from any non-manufacturer, and so we first check for a Pedigree when we receive that product. If we aren't purchasing that medication directly from the manufacturer, we buy it only from an ADR-Authorized Distributor of Record. We track it by NDC # (National Drug Code #), by date, and by Lot #.

Did you know that Penicillin's and Cephalosporin's are NOT packaged in the same room, not even in the same building at the same address, as non beta-lactams? That's to prevent contamination so that no one who is allergic to those drugs are exposed to them. These medications are safer for patients than medications counted in a pill tray at a pharmacy.

There are many more reasons to buy from a Re-packager, than not to. Remember to look at the cost to MMI (Maximum Medical Improvement), and to include the cost of losing a life to a Diverter, rather than just singling out one part of the cost-factors as the "bad-egg" in Workers' Comp. By not allowing the acknowledgment of Repacker's AWPs, you are preventing "good practice" to take place.

Please vote NO on HB1243.

Sincerely,

Michael W. Holmes, CEO
QCP, LEWM
Ph: 800 284 3130, Ext 260
Cell: 419 351 7354
Mike.holmes@qcprx.com

AHCS
Automated HealthCare Solutions

February 27, 2011

Attn: Committee on Finance; Rep Marcus Oshiro, Chair and Marilyn Lee, Vice Chair

Re: **Opposition of HB1243 - Relating to Repackaged Drugs and Compound Medications**

Dear Distinguished Committee Members:

Proponents of the bills before you point to circumstantial evidence that suggests a cost savings in pharmacy-dispensed medications. These views are both prejudiced and myopic as it relates to cost savings for the Hawaii work comp system as a whole and the unintended consequences any fee schedule change will have on access to care for Hawaii's injured workers.

I would like to point to an empirical study recently published by the Workers' Compensation Research Institute that demonstrates how physician-dispensed medications save the workers' compensation system as measured on a per-claim and per-script basis.

Geico, in its' testimony, points to one instance whereby a physician-dispensed medication was more costly than a similar pharmacy-dispensed medication. Geico's "cherry picked" claim is inconclusive as the AWPs of any particular medication is tied to its' national drug code, which varies widely across manufacturers.

There are studies that have conducted similar analysis with statistically significant sample sizes:

The Workers' Compensation Research Institute's (WCRI) latest report published in March of 2010 (see attached "WCRI Report", p. 28) sought to compare costs between pharmacy-dispensed and physician-dispensed medications across 16 sample states. Indeed, the report concluded that physician-dispensed medications were incrementally more on a per-pill basis than pharmacy-dispensed medications, at a rate of $1.29 to $1.16.

However, on a per-script and per-claim basis, **physician-dispensing has proven to be more cost-effective**:

i. The average cost for a pharmacy-dispensed script was $51 as compared to $37 for a physician-dispensed script
ii. The average cost for a pharmacy-dispensed claim was $400 as compared to $128 for a physician-dispensed claim

Physicians do not enjoy the huge rebates offered from manufacturers and distributors of drugs that pharmacy chains do, nor do they have the resources to count pills nor the ability to assume the huge liability of cross-contamination and wrong-fills. Thus, for safety reasons, physicians must purchase medications in treatment dosages. There is obviously a cost associated with packaging medications in treatment dosages with trackable bar-coding. This explains the incremental cost on the per-pill level.

However, advocates of this bill are still missing the big picture and do not see the savings not only on prescription costs at the claim and script level but the **enormous savings on the indemnity portion of the claim due to injured workers' actually being able to receive their medications** and follow their treatment protocol. As you know, the indemnity portion of any work comp claim is approximately 50% of the total claim, while the prescription medication portion is merely 5%.
I would also like to point to two more studies that demonstrate that any altering of Hawaii fee schedules as it relates to workers' compensation would drive specialists out of workers' compensation and severely choke off injured workers' access to care.

In 1998, in response to growing concerns about injured workers' access to medical care, Hawaii's state legislature commissioned a study by the Legislative Reference Bureau to determine if "the 110% ceiling on workers' compensation medical fee schedule should be adjusted". "The Bureau found a significant trend in health care providers that is shifting away from accepting all patients with workers' compensation injuries and moving towards policies that limit or totally reject prospective patients with work-related injuries covered under the workers' compensation law. The most common reason given for this trend is the change in the medical fee schedule level of reimbursement". The chart (p. 13 of the attached UCLA Study), concludes that **77% of Hawaii neurologists, neurosurgeons, orthopedists & physical med/rehab physicians accepted work comp before the straight 110% Medicare Fee Schedule while only 23% did after implementation of the new fee schedule**.

A follow-up study was conducted by the California Association of Neurologists by interviewing all Hawaii neurologists in private practice to see if participation levels were improving as physicians adjusted their practices to the reality of the 110% fee schedule..."[p]erhaps the most troubling finding with regard to Hawaii is that it appears that the decline in physicians accepting workers' compensation caused by low-multiple fee schedules is extremely long-lasting...physician participation levels remained largely unchanged even ten years after the original fee schedule was adopted, with less than 30% of all neurologists accepting workers' compensation patients in Hawaii in 2005."

Current research has suggests that participation in Hawaii has dipped even more, with only 19% of neurologists and 44% of orthopedists indicating that they still accept workers' compensation patients.

Physician dispensing has allowed specialists to gradually come back into workers' compensation by allowing them to subsidize the enormous overhead and reduced fee schedule associated with treating an injured worker.

Due to the high cost of purchasing medications in prescription doses, a new fee schedule based on original manufacturer's AWPs will cause physician dispensing to be a loss leader for physicians, thus eliminating it as an option to injured workers.

Any hypothetical cost savings to insurance companies will come at the real cost of impeding access to care for injured workers in Hawaii.

Please interdict the proposed regulations and call on your fellow commissioners to vote against their promulgation.

Sincerely,

Cathy Wilson

AHCS Regional Director
Phone: 954-993-2754
Email: cwilson@ahcs.com

PCI Property Casualty Insurers Association of America
Shaping the Future of American Insurance
1415 L Street, Suite 670, Sacramento, CA 95814 Telephone 916-449-1370 Fascimile 916-449-1378 www.pciaa.net

To: The Marcus Oshiro, Chair
House Committee on Finance

From: Samuel Sorich, Vice President

Re: **HB 1243 HD2 – Relating to repackaged drugs and compound medications**
PCI Position: Support

Date: Monday, February 28, 2011
3:30 p.m.; Conference Room 308 (AGENDA # 7)

Aloha Chair Oshiro and Committee Members,

The Property Casualty Insurers Association of America (PCI) supports HB 1243 HD2 which would limit markups of repackaged prescription drugs and compound medications to what is currently authorized for retail pharmacies under state law.

This bill would treat such drugs in the same manner as other drugs and keep the cost of such drugs more affordable for workers' compensation care. Recent workers compensation cost data has shown an alarming increase in medical costs and much of this cost is driven by pharmacy costs, in particular the increasing use of repackaged and compound drugs. Often times these drugs are "created" or packaged for the sole purpose of moving the prescription off of the pharmacy fee schedule. Hawaii already has one of the most generous workers' compensation fee schedules in the nation to reflect the unique challenges faced in Hawaii. **HB 1243 HD2 would close this loophole by limiting the markups for these types of drugs.**

Compound medications are often paired with topical and transdermal creams that have not been approved by the FDA which poses a safety risk to injured workers. Since compound medications are a combination of other medications, these medications present unique billing issues and many insurers have seen instances where the bill for a compounded drugs is several times more expensive than the comparable oral, FDA-approved, commercially available oral dosage.

We note that the intent of this legislation is not to abolish the use of compound or repackaged medications but to merely place some guidelines around their use. In some cases, these types of medications may be appropriate. These drugs, however, should be treated in the same manner as other drugs. Medical necessity should drive the desire to prescribe a medication, not a higher reimbursement rate. This bill an important step not only for controlling an unnecessary cost to the workers' compensation system, but also to ensure that injured workers are protected and the practice does not generate inappropriate fees. **This bill in no way takes away from a physicians' ability to dispense medication. It keeps the cost of compound and repackaged drugs from escalating beyond what's allowed by the state's Workers' Compensation Fee Schedule, which is 100% of the original average price plus a 40% markup.**

Thank you again for the opportunity to present testimony in strong support of HB 1243 HD2. PCI respectfully requests your support for this bill.

Aloha Pain Clinic
Big Island & Maui
(808) 885-7246

February 26, 2011

Re: HB1243 Relating to Repackaged Drugs and Compound Medications

Dear Sirs and Madams of the Committee on Finance,

This letter is in strong opposition to the proposed fee schedule change that will dictate and change reimbursement for all prescription medications dispensed in a workers' compensation case in Hawaii. As a physician who practices on the outer islands and has limited access to ancillary help such as pharmacies, this would be disastrous. Here on the Big Island our nearest pharmacy is over 20 miles away and is inaccessible to most of our patients. Hawaii has historically been known for the worst reimbursement rates. The proposed Hawaii fee schedule change would set a reimbursement rate that would cripple our practice by reducing the reimbursement rate by more than half for practitioners that provide medications in treatment dose.

Currently, many Hawaiian physicians, including myself, offer point-of-care dispensing to their workers' compensation patients. As you can imagine, the ability of these injured workers to receive their medication for free at the doctor's office is of enormous benefit. The majorities of our patients are underprivileged and can't afford their prescriptions or a means of transport to and from the pharmacy. Typically, when an injured worker is forced to go to a pharmacy to fill a prescription they have difficulty in receiving their medications due to the awkwardness of the work comp verification process. Work comp patients that receive their meds at point of care are more likely to abide by their course of therapy, reach Maximum Medical Improvement faster, return to work quicker and will be less inclined to involve a lawyer in their case and decreases the indemnity portion of the work comp claim cost, which is on average 50% of the total claim cost.

The proposed fee schedule would prevent me from being able to continue this service to my work comp patients and will decrease the current level of care I am able to provide to these patients. As a result injured workers would be severely limited in their access to the quality health care and no-cost medications that they are entitled to which will in turn, increase the overall cost of the workers' and decrease the likelihood of further state run assistance.

Please join us in ensuring that injured workers continue to receive superior medical care in Hawaii by rejecting the proposed fee schedule that would eliminate my ability to provide this service to my patients.

Thank you,
Rudolph Puana MD

February 27, 2011

Attn: Committee on Finance; Rep Marcus Oshiro, Chair and Marilyn Lee, Vice Chair

Re: **HB1243 - Relating to Repackaged Drugs and Compound Medications**

Dear Sirs and Madams:

I oppose strongly the proposed bill HB1243. This is to reduce my physician's reimbursement so that he will no longer be able to afford to offer such a convenient service to his patients, like medication dispensing. This will make it difficult for workers who are injured, easy to access medication. Apparently, there are extra costs in work comp because the doctors have to deal with adjusters and the insurance carriers take forever to pay. Insurance companies own pharmacies (or have pharmacy programs they subscribe to like PBMs) who get rebates from manufactures (my Auntie is a pharmaceutical rep and she told me this). They give discounts (lower reimbursement fee schedules) to themselves or make it seem that the only way to get medications to have patients utilize their programs, i.e., mail order. They don't care about how difficult this is for the patients. Aren't there laws against these kinds of kick backs?

I hear that if this law is passed all the good doctors will stop seeing injured workers. I heard Hawaii is already short 644 physicians for the amount of people in Hawaii. Of those existing physicians, only a very few will take on Workers' Compensation patients. Isn't time to stop making the laws that allow the insurance companies the control to wipe out physicians from practicing good medicine?

I am asking you don't allow this proposed law to be enacted. Vote no on HB1243.

Sincerely,

Alissa Katada

alissakatada@me.com
(808) 386-7122

February 27, 2011

To: Hawaii Legislature and Honorable Members of the Committee on Finance

From: James F. Van Natta MD

Concerning: **HB1243 Relating to Repackaged Drugs and Compound Medications**

Dear Rep Marcus Ohsiro, Chair and Rep Marilyn Lee, Vice Chair and Committee members,

I am an interventional pain management physician. My partners and I have two multidisciplinary clinics, one in Kahului and the other in Waikoloa, i.e. Aloha Pain Clinic (APC). Following is a brief description of the reasons we are in **opposition of house bill 1243**:

- Analysis of APC's account receivables illustrates the extreme lag time between treating workman's compensation (WC) patients and receiving reimbursement; e.g. WC pays an average of 34% expected payments vs. 71% by other major carriers including Medicare, HMSA, Quest, and Alohacare within 120 days
- Physician dispensing is an available tool to marginally increase revenue to aid in maintaining collections at a sufficient level to continue to treat WC patients during the extended collection period
- Clinic/Physician controlled dispensing allows for greater control of opioids and other habit forming medications. The most rigid control of addictive prescription drugs, and thus prevention of abuse, would be achieved by only permitting patients to receive these medications at the clinic level by one specific provider for the patient.
- WC documentation, billing, collections, etc., time commitment requires much greater time than any other carrier. Perhaps, as much as 4-5 times more.
- Passing these Bills will greatly decrease the number of providers treating WC patients, including APC.

Sincerely,

James F. Van Natta MD
frankvannatta@hotmail.com

Big Island
68-1845 Waikoloa Rd #216
Waikoloa, Hawaii 96738

Maui
53 S. Puunene Ave #100
Kahului, HI 96732
(808) 885-PAIN

TESTIMONY: Opposing HB 1423

Dear Distinguished Chair Oshiro and Honorable Committee Members:

Hawaii's physicians take issue with and wish to refute the inflammatory testimony given by this bills chief proponent in the following ways.

First, we challenge the basic premise of this legislation, which is that costs are in some way "out of control"; therefore it is justified to functionally strip doctors of their historic rights to dispense medications to their patients. Workers comp premiums have been falling in our state for the last five years thanks, in part, to the efficient delivery and cost control efforts of the very doctors this bill will injure most (i.e. Hawaii's Orthopedist and Occupational Medicine Doctors).

Next, the doctors of this state; and especially those who are still willing to care for injured workers; take offense at HEMIC's derogatory and accusatory remarks inferring that the long standing practice of physician dispensing is akin to tax evasion and a "loophole" that must be "nipped in the bud" because it is costing them and other payers too much. Actually HEMIC has done so well lately they have accumulate over ¼ of a billion dollars in investment assets and enjoys an enviable loss ration of less then 40 cents paid out in benefits out of every employer premium dollar that passes thru its hands. So where's the fire?

Finally, the real problems of our state's Workers Comp System (i.e. doctors boycotting the System by refusing to see industrial claims) will be exacerbated and made worse by this act. The entire HPH Healthcare System (Straub, Pali Momi, Kapiolani and Wilcox Hospitals) has already opted out--along with the entire psychiatric community and most of the eye specialists. Over the last two decades the number of orthopedist in Hawaii have dwindled from 73 to 23 and if this bill goes through, Oahu's two largest remaining orthopedic groups (Orthopedic Associates and The Bone and Joint Group—11 surgeons) may be unable to continue to care for WC patients because of the lost revenue offset that dispensing provides for these time-intensive, litigious cases.

Since this bill a.) addresses a problem that does not really exist and b.) serves only to make a real crisis worse, I suggest it be declared DOA or Dead on Arrival. It is a shortsighted, destructive approach to the complex ills of this important safety net, which would be best served through the encouragement, and support of our medical community, not visa-versa.

Scott McCaffrey, MD
Emergency and Occupational Medicine
Hawaii Medical Center-West

Work Star
Injury Recovery Center

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 28, 2011 8:53 AM
To: FINTestimony
Cc: Moore4640@hawaiiantel.net
Subject: Testimony for HB1243 on 2/28/2011 3:30:00 PM

Testimony for FIN 2/28/2011 3:30:00 PM HB1243

Conference room: 308
Testifier position: oppose
Testifier will be present: No
Submitted by: Douglas Moore
Organization: Individual
Address:
Phone:
E-mail: Moore4640@hawaiiantel.net
Submitted on: 2/28/2011

Comments:
I am opposed to this bill. Please hold this bill. Mahalo

HB 1243

We received hundreds of form testimony in Against this bill

To the Hawaiian Legislature:

I just learned that the Hawaiian Legislation has proposed new laws that will reduce worker's compensation medication reimbursement so that doctors will no longer be able to dispense medications to injured workers' like myself.

This will make it difficult for workers like me who are injured to access medication. You see, I do not have a workers' compensation prescription card and therefore have to pay out of pocket for my medications or wait days for insurance verification if I go to the pharmacy. Being able to immediately receive my medications for free at my doctor's office is critical to my recovery.

My recovery went well because I had good access to treatment, a good doctor and was able to get my care without large expenses out of my pocket that, frankly, I could not afford.

Also, I hear that if this law is passed all the good doctors will stop seeing us injured workers. I heard Hawaii is already short 500 physicians for the amount of people in Hawaii. Apparently, there are extra costs in work comp because the doctors have to deal with adjusters and the insurance carriers take forever to pay.

I am asking you don't allow this proposed law to be enacted.

Sincerely,

Malunao-Barba, Tanyalyn
94-186 Kaima Pl.
Waipahu, HI 96797
330-3257