



**STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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February 4, 2011

To: The Honorable Karl Rhoads, Chair  
and Members of the House Committee on Labor & Public Employment

The Honorable Angus L. K. McKelvey, Chair  
and Members of the House Committee on Economic Revitalization & Business

Date: February 4, 2011  
Time: 9:00 a.m.  
Place: Conference Room 309, State Capitol

From: Dwight Y. Takamine, Interim Director  
Department of Labor and Industrial Relations

**Re: H.B. No. 1433 Relating to Repackaged Drugs & Compound Medications**

**I. OVERVIEW OF PROPOSED LEGISLATION**

House Bill 1433 proposes to amend Section 386-21, HRS, by restricting the cost of repackaged or relabeled drugs to not exceed the amount that was paid had it not been repackaged or relabeled. The same would apply to any compound medication that is repackaged or relabeled. This bill will also allow prescription reimbursement of the lower of the average wholesale price plus forty percent or the carriers benefit network price.

**II. CURRENT LAW**

The current Workers' Compensation Medical Fee Schedule Administrative Rule, Section 12-15-55, allows for prescription drugs to be reimbursed at the average wholesale price as listed in Redbook plus forty percent when sold by a physician, hospital, pharmacy, or provider of service other than a physician. All billings for prescriptive drugs must include the national drug code listed in Redbook followed by average wholesale price listed at time of purchase by the provider of service.

The current law does not address the reimbursement of repackaged and relabeled, and compound medications.

### III. SENATE BILL

The Department supports the intent of the bill, which opposes excessive or unnecessary added cost of prescription medication. The department continues to work towards insuring that Hawaii's injured workers continue to receive quality medical care, services, supplies, and easy access to filling prescription medication, while insuring providers of services and suppliers who care for Hawaii's injured workers are fairly reimbursed. The department does have an additional concern:

1. The bill is not clear as to its meaning when it specifies that prescription medication will be reimbursed at the lower of the average wholesale price plus forty percent or an insurer's "pharmacy benefit network price". It is not clear what this pharmacy benefit network price is and if this will restrict an injured worker to filling prescriptions at a specific pharmacy.

# HEMIC

Hawaii Employers' Mutual Insurance Company, Inc.

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February 2, 2011

The Honorable Karl Rhoads,  
Chair, House Committee on Labor & Public Employment

The Honorable Kyle Yamashita  
Vice Chair, House Committee on Labor & Public Employment

The Honorable Angus McKelvey,  
Chair, House Committee on Economic Revitalization & Business

The Honorable Isaac Choy,  
Vice Chair, House Committee on Economic Revitalization & Business

**Re: HB 1243 & HB 1433 - Relating to the Drug Repackaging and Compound Medication Bills**

Dear Chairman Rhoads, Vice Chairman Yamashita, and Members of the LAB Committee and Chairman McKelvey, Vice Chairman Choy, and Members of the ERB 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, its CEO, Bob Dove, and its President, Jason Yoshimi, to testify in strong support of HB 1243 & HB 1433.

HB 1243 & HB 1433, the Drug Repackaging and Compound Medication bills, are important pieces of legislation. It closes an existing loophole in Hawaii's Medical Fee and Prescription Drug statutes which increasingly impacts the workers' compensation and auto insurance industries.

More specifically, this loophole has enabled drug repackagers and/or drug repackager suppliers and complicit Hawaii physicians dispensing these drugs to abuse the workers' compensation system by establishing exorbitant prices for "re-packaged" prescription drugs and "compound medications." It is an abuse of physician drug dispensing in this state. It unnecessarily increases the cost of prescription medications with no beneficiaries except the repackagers and complicit physicians who distort the fee schedule.

## Terminology

Before I continue, it is important to understand what “repackaged drugs” and “compound medications” are.

“Re-packaging” is the practice of breaking a bottle of a larger quantity (of drugs) down to several bottles of smaller quantities. Medications are identified by a three segment number consisting of 11 digits called an NDC (National Drug Code) number. The first segment identifies the manufacturer, the second segment identifies the product and the third identifies the package size.

Compounding is defined as the combining of two or more “raw” ingredients into a unique product to provide therapeutic relief of an injury or illness. They are generally prescribed as a result of a patient’s known allergy of a manufactured product’s inert ingredient (e.g., the dye in a pill) or a patient’s inability to absorb or process a manufactured medication orally.

## The Loophole

So here is the crux of the problem. Although a registered re-package company does not manufacture any actual product, they were classified as a manufacturer pursuant to The Federal Drug Listing Act of 1972, which required 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.

Because of this “manufacturing” classification, a repackager (who again is not a real manufacturer) can re-label an existing product with its own National Drug Code number identifying them as the manufacturer for the product delivered in the bottle. Because of this quirk, re-packagers can establish a new wholesale price for the same product and can periodically change that price as they determine.

## The Compound Issue

As with repackagers, 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. Some compound medications may be medically necessary. That being said, compound medications present a challenge in how they are reported and identified for billing purposes.

Specifically, unlike re-packaged drug manufacturers who create a unique National Drug Code (NDC), Compound medications, do not have these unique NDCs as they are the combination of several drug products – each with its own NDC. 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 and/or suppliers can exploit this ambiguity to their advantage by unreasonably marking up the costs of such medications.

#### The Hawaii Component

The Hawaii state fee schedule is the average wholesale Price plus forty (40%). This is currently the highest reimbursement rate for pharmaceuticals in the nation and it certainly makes Hawaii a very attractive target.

More important, current Hawaii statutory law inadvertently enables abuse by the repackager because it fails to differentiate between the original manufacturer and the repackager. The current statute also does not clearly define compound medications thereby allowing for the possibility of some to exploit the ambiguity. Many others will provide you with the specific details of the cost variances that we have experienced as a result of abusive repackaging and compound medication practices. Suffice it to say the cost increases have been substantial and all indicators point to an exponential increase if nothing is done.

#### National fight

This is truly a battle taking place nationwide. Several states, such as California, Arizona, and Mississippi, have already refined their statutes and administrative rules to demarcate the difference between the original manufacturer and the third party repackager and clearly define compound medications.

The experience in other states has also shown that when a state government closes the re-packaging loophole, re-packaging firms resort to compound medications to unreasonably inflate drug costs and continue with increase their profit margins. Thus this proposed legislation seeks to address both practices at the same time.

#### Broad support

The experience of other states is that a broad coalition has come together to combat the unreasonable increase in the cost of prescription medications caused by repackaged drugs and compound medications.

#### We support Physician Dispensing

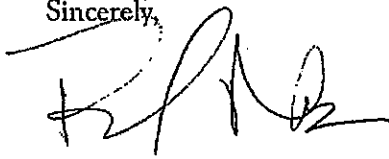
One final point to make, HEMIC supports physician dispensing of medications. We believe it is a good practice that helps everyone in the transaction.

What we are against, and what this legislation seeks to address, is the problem caused by the few who seek to take advantage of the rest, the few who unreasonably inflate the costs of such medications, to increase their profits at the expense of everyone else. 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 dispense. Distorting the fee schedule through the mechanism described above is an abuse that these bills will effectively curtail.

Thank you again for the opportunity to present testimony in strong support of HB 1243 & HB 1433. I respectfully request your support for these bills.

Sincerely,

A handwritten signature in black ink, appearing to read 'Paul Naso', written over a faint dotted line.

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

PN:rm

## TESTIMONY OF LINDA O'REILLY

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HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT  
Representative Karl Rhoads, Chair  
Representative Kyle T. Yamashita, Vice Chair

HOUSE COMMITTEE ON ECONOMIC REVITALIZATION & BUSINESS  
Representative Angus L.K. McKelvey, Chair  
Representative Isaac Choy, Vice Chair

Friday, February 4, 2011  
9:00 a.m.

### **HB 1243 and HB 1433**

Chair Rhoads, Chair McKelvey, and members of the Committees, my name is Linda O'Reilly, Workers' Compensation Claims Manager at First Insurance. I am here representing 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 and HB 1433, 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 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	\$24.98	100.7%
ACETAMI/CODE 300/60MG	60	\$98.87	\$78.68	23.1%
ACETAMINPHEN/CODE 300/30MG	30	\$26.04	\$12.48	100.7%
ALPRAZOLAM .5MG	30	\$68.63	\$35.48	93.5%
CELEBREX 200MG	30	\$232.62	\$186.08	25.0%
DIAZEPAM 5MG	30	\$143.78	\$8.32	1627.9%
DOCUSATE SODIUM 100MG	30	\$54.80	\$8.32	568.6%
FLUOXETINE HCL 10MG	30	\$259.77	\$103.78	150.3%
FLUOXETINE HCL 20MG	30	\$288.45	\$112.08	137.8%
ETODOLAC 50MG	30	\$71.66	\$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	\$211.68	45.7%
GABAPENTIN 600MG	120	\$616.83	\$423.38	45.7%
HYDRO/APAP 10/850MG	30	\$73.23	\$22.34	227.8%
HYDRO/APAP 10/850MG	60	\$148.47	\$44.69	227.8%
HYDRO/APAP 5/500MG	30	\$48.29	\$17.68	174.7%
HYDRO/APAP 5/500MG	60	\$96.58	\$35.36	174.7%
HYDRO/APAP 5/500MG	120	\$193.12	\$70.31	174.7%
HYDRO/APAP 7.5/500MG	30	\$80.35	\$21.63	178.1%
HYDRO/APAP 7.5/500MG	60	\$120.71	\$43.25	178.1%
HYDROCODONE/APAP 7.5/80MG	30	\$53.98	\$14.93	281.4%
IBUPROFEN 400MG	30	\$12.38	\$7.21	71.6%
IBUPROFEN 400MG	60	\$24.74	\$14.42	71.6%
IBUPROFEN 800MG	90	\$55.08	\$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	\$288.18	\$203.49	41.8%
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	58.2%
TRAMADOL 50MG	60	\$130.58	\$70.04	88.4%
TRAMADOL 50MG	120	\$261.18	\$140.08	88.4%
TRAZODONE HCL 50MG	30	\$89.78	\$18.54	384.3%
TRIAZOLAM .25MG	30	\$78.86	\$28.34	178.6%
ZOLPIDEM 10MG	30	\$233.81	\$192.11	21.7%





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

TIMOTHY M. DAYTON, CPCU, GENERAL MANAGER ALASKA & HAWAII  
711 Kapiolani Blvd., Suite 300 ■ Honolulu, HI 96813-5238 ■ Email: [tdayton@geico.com](mailto:tdayton@geico.com)  
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**House Committee on Labor & Public Employment**  
**House Committee on Economic Revitalization & Business**  
Conference Room 309 State Capitol  
Friday, February 4, 2011, 9:00 a.m.  
**HB 1243 & 1433 – Relating to Repackaged Drugs**

Chair Rhoads, Chair McKelvey, Vice-Chair Yamashita, Vice-Chair Choy and Members of both Committees:

My name is Timothy Dayton and I am General Manager for GEICO, Hawaii's largest motor vehicle insurer. GEICO supports HB1243 and HB1433. The Bill as written does not specifically spell out the intent of the Legislature as it relates to benefits paid under the Personal Injury Protection (PIP) on a motor vehicle insurance claim. Although HRS 431:10C specifically limits charges for PIP benefits to those allowed under Chapter 386, it would be helpful to specifically reference motor vehicle insurance to eliminate any ambiguity or dispute. I have attached proposed language for Section 1 of these two Bills which I believe would provide sufficient clarification of legislative intent.

I have also attached a specific example showing the difference in charges for a prescription purchased from a pharmacy compared to billing for purchase of the same drug repackaged. The prescription charges in the attached example are for

SECTION 1. The legislature finds that regulating markups of repackaged prescription drugs and compound medications will help to contain unreasonable increases of prescription drug costs in Hawaii's workers' compensation insurance and motor vehicle insurance systems as repackagers expand into states, including Hawaii, where costs of repackaged drugs and compound medications are not regulated.

The legislature further finds that Hawaii's current reimbursement rate for pharmaceuticals is the highest in the nation for both brand and generic products.

The purpose of this Act is to close a loophole in Hawaii's workers' compensation insurance and motor vehicle insurance laws to reasonably restrict markups of repackaged prescription drugs and compound medications to what is currently authorized for retail pharmacies under state law.



PHARMACY INVOICE

PO Box 271589
Salt Lake City, UT 84127-1589
(866) 428-8679
Federal Tax ID 35-2194964

Handwritten notes: 07 0956 p958

INVOICE NO.: 1872720

INVOICE DATE: 10/25/2010

Bill To:

Fbi-9x12-222-924
GEICO
PO BOX 509119
SAN DIEGO CA 92150-9119

Card Holder / Injured Person

Patient: [Redacted] DONNA J.
Policy No.:
Claim No.: 0308757180101010

Table with columns: Fill Date, Rx No., NDC Drug Name, Compound, Refill, Qty, Days Supply, Prescriber ID, Amt Due. Includes entry for CELEBREX CAP 200MG with amount \$134.99.

Please remit payment to AutoRx at the address printed above.

I certify charges are in compliance with Hawaii Administrative Rule 16-23 and the Medical Fee Schedule defined by HRS 431:10C-103.. AutoRx certifies that these charges are billed in accordance with Chapter 386, HRS and any related rules.



Marriott International, Inc.  
Marriott Casualty Claims

3130 S. Harbor Blvd.  
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714/545-5261

February 2, 2011

House Committee on Labor and Public Employment  
House Committee on Economic Revitalization and Business

Re: HB 1243 and HB 1433

Dear Honorable Representatives Karl Rhoads and Angus L. K. McKelvey:

Marriott International, Inc. is in full support of House bills 1243 and 1433 and we urge passage of these bills by your respective committees.

It is critical that any effort to expand the cost of workers' compensation for ancillary services in the state of Hawaii be carefully controlled. Failure to do so will continue to impact Marriott and our ability to provide much needed jobs to the citizens of the state of Hawaii.

Thank you for your support of House bills 1243 and 1433.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Jill A. Dulich'.

Jill A. Dulich  
Senior Director, Marriott Claims Services  
Marriott International, Inc.