HB 1240

LATE LATE TESTIMONY

The Chamber of Commerce of Hawaii

The Voice of Business in Hawaii

Testimony to the House Committees on Labor and Public Employment and Health
Wednesday, February 6, 2013 at 8:45 A.M.
Conference Room 329, State Capitol

LATE TESTIMONY
LATE TESTIMON

RE: HOUSE BILL 1240 RELATING TO MEDICATIONS

Chairs Nakashima and Belatti, Vice Chairs Hashem and Morikawa, and Members of the Committees:

The Chamber of Commerce of Hawaii ("The Chamber") **has concerns on** HB 1240 Relating to Medications.

The Chamber is the largest business organization in Hawaii, representing over 1000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

This measure restricts the reimbursement of repackaged prescription drugs and compound medications to amounts similar in a retail pharmacy. This will help address the large spike in drug costs in workers' compensation. However, we are concerned with the change of 40% to 60% in subsection (e) of the bill.

Thank you for the opportunity to testify.

The Twenty-Seventh Legislature
Regular Session of 2013

LATE TESTIMONY
LATE TESTIMONY

HOUSE OF REPRESENTATIVES
Committee on Labor & Public Employment
Rep. Mark M. Nakashima, Chair
Rep. Mark J. Hashem, Vice Chair
Committee on Health
Rep. Della Au Belatti, Chair
Rep. Dee Morikawa, Vice Chair

State Capitol, Conference Room 329
Wednesday, February 6, 2013; 8:45 a.m.

STATEMENT OF THE ILWU LOCAL 142 ON H.B. 1240 RELATING TO MEDICATIONS

The ILWU Local 142 supports H.B. 1240, which restricts reimbursement of repackaged prescription drugs and compound medications to amounts comparable to that of retail pharmacies under stae law.

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

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

We fully understand the debate but also believe that pricing should be fair. What is being proposed by H.B. 1240 seems fair as it restricts reimbursement for repackaged prescription drugs and compound medications to amounts comparable to that of retail pharmacies under state law. Physicians are providing medications in their offices as a convenience to their patients but should not expect to profit unfairly for this service.

The shortage of physicians willing to treat injured workers, however, is definitely alarming. Low reimbursements and high paperwork requirements under workers' compensation have driven many physicians to discontinue treating injured workers—or not consider treating them in the first place. These issues must be addressed if the law is to responsibly attend to injured workers. H.B. 152 proposes to address medical fee schedules under workers' compensation by increasing them to 130% of Medicare fees. The Department is also looking at adjusting fees for several provider categories administratively.

The ILWU urges passage of H.B. 1240. Thank you for the opportunity to provide testimony on this measure.

WIMAH

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WORK INJURY MEDICAL ASSOCIATION OF HAWAII
91-2135 FORT WEAVER ROAD SUITE #170
EWA BEACH, HAWAII 96706

MAULI OLA
THE POWER OF HEALING

FEBRUARY 5, 2013

COMMMITTEE ON LABOR AND PUBLIC EMPLOYMENT
AND
COMMITTEE ON HEALTH

HOUSE BILL 1240 RELATING TO MEDICATIONS

RESTRICTS REIMBURSEMENT OF REPACKAGED PRESCRIPTION DRUGS AND COMPOUND MEDICATIONS TO AMOUNTS COMPARABLE TO THAT OF RETAIL PHARMACIES UNDER STATE LAW.

WORK INJURY MEDICAL ASSOCIATION OF HAWAII SUPPORTS THE INTENT OF THIS BILL.

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

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

LATE TESTIMONY

LATE TESTIMONY

CORVEL

TO: The Honorable Mark M. Nakashima, Chair
House Committee on Labor & Public Employment

The Honorable Della Au Belatti, Chair
House Committee on Health

FROM: Matt Engels, Vice President, Network Solutions
CorVel Corporation

Re: HB1240 Relating to Medications
CorVel Corporation Position: SUPPORT

Date: Wednesday, February 6, 2013: 8:45AM
Conference Room 329

Dear Honorable Chairs Nakashima and Au Belatti and members of the House Committees on Labor & Public Employment and Health. CorVel Corporation is a national provider of industry-leading solutions for employers, third party administrators, insurance companies, and government agencies seeking to control medical costs and promote positive outcomes.

CorVel Corporation is in **SUPPORT** of the intent of HB1240 with the following recommendations:

- If the prescription drug dispensed outside of a retail, mail order, or institutional pharmacy is for a repackaged drug, the maximum reimbursement amount shall be calculated utilizing the average wholesale price set by the original manufacturer of the underlying drug. If the National Drug Code (NDC) of the underlying drug cannot be determined from the billing, the maximum reimbursement amount shall be calculated utilizing the lowest cost therapeutically equivalent or (LTE) drug vs. the language "most reasonable and closely related average wholesale price for the underlying product".

- Medications dispensed outside of a licensed pharmacy to an injured worker are limited to a 7 day supply measured from the date of injury. Those medications exceeding the day supply limit will not be reimbursed.

Pharmacy costs continue to drive a larger percentage of workers compensation costs. Pharmaceutical price increases, increase in narcotics, prescribing patterns, and an increase in physician dispensing are all contributors. A recent NCCI study reported 19% of total workers' compensation claims costs are for pharmacy claims. CorVel conducted a survey and found that over 40% of prescriptions were dispensed from doctors which have a dramatic impact on costs.

CorVel Corporation
Www.corvel.com

Davies Pacific Center
841 Bishop Street, Suite 1080
Honolulu, HI 96813

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888.383.3803

Cost Issue

1) CA has applied the LTE approach since 2007.
2) 14 other states have adopted regulations, most recently IL and MI. Others are considering this.
3) Concentra, the nation's largest occupational medicine provider, endorses regulating the premiums from repackaged meds dispensed in office by physicians.
4) The practice is common in work comp and some auto states, but almost non-existent in group health and Medicare.
5) NCCI and WCRI have documented the price premiums.
6) The physician repackaging industry distorts the cost issue by ignoring the fact that repackaged meds are typically generics, not brands, so when comparing the net impact of average cost per drug, they ignore the fact that the other side has a 30/70 brand/generic ratio and they typically have a 0/100 ratio – thus their averages are artificially deflated.
7) The repacking industry also distorts cost per claim stats. Approximately 1/3 of all patients in work comp have one-fill and case closed. Since the first fill is the most likely physician dispensed medication, the averages are weighted to the single fill.

Safety Issue

1) Physicians dispensing without insight into objective Rx history is a dangerous practice.
2) Patients will commonly not share all the meds they are on, either because they simply do not recall all of them, or they don't want to share them. The prescriber needs an objective source.
3) The neighborhood retail pharmacy, where the patient likely fills all the other scripts, is the most logical site from which to aggregate drug information.
4) The repacking industry proclaims quality and control, but they have only anecdotal data to support their claims.
5) The practice contributes to the sick role. Injured workers are not sick, they are capable of filling a prescription at a retail pharmacy. To suggest that they lack the functional ability to do this is illogical, and to treat a potentially impressionable injured worker as needing a special delivery system for medications creates dependence and thereby fosters the sick role.

Thank you for the opportunity to provide written testimony.

Rx Development
Doctors Medical

2/06/2013

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT: Rep. Mark M. Nakashima, Chair, Rep. Mark J. Hashem, Vice Chair, Rep. Henry J.C. Aquino, Rep. Ryan I. Yamane, Rep. Linda Ichiyama, Rep. Kyle T. Yamashita, Rep. Kaniela Ing, Rep. Aaron Ling Johanson & Rep. Roy M. Takumi

COMMITTEE ON HEALTH: Rep. Della Au Belatti, Chair, Rep. Dee Morikawa, Vice Chair, Rep. Rida T.R. Cabanilla, Rep. Bertrand Kobayashi, Rep. Mele Carroll, Rep. Justin H. Woodson, Rep. Jo Jordan & Rep. Lauren Kealohilani Cheape

Re: Support for HB 891 - RELATING TO WORKERS' COMPENSATION DRUGS and Support for HB 1240 - RELATING TO MEDICATIONS.

Chairmen / Chairwomen and Members of the Committee:

Thank you for this opportunity to testify in support of House Bills 891 and 1240.

We, RxDevelopment, fully support the utilization of In-Office Medication Dispensing for patients being treated for work related injuries as well as personal injury.

Point of Care dispensing of repackaged medications allow for physicians to safely and accurately dispense medications on a national basis and meet all state requirements for safety and reporting of the medications being utilized. In-Office Dispensing provides an extremely valuable service for the patients and helps to drive improved patient compliance and thus improved care. These two aspects help the patients return to work sooner to make a healthy living and save the overall aggregated healthcare costs.

House bills 891 and 1240 are bills that we will support as it continues to allow patients to receive their needed medications by the physician they trust in accordance with their treatment plan.

Daniel Zukowski
President

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Drs Medical

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February 6, 2013

LATE TESTIMONY

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To: The Honorable Mark M. Nakashima, Chair
And Members of the House Committee on Labor and Employment

The Honorable Della Au Belatti, Chair
And Members of the House Committee on Health

Date: February 6, 2013
Time: 8:45 AM
Place: Conference Room 329

Re: HB 1240 Relating to Medications

Chair Nakashima, Chair Belatti, Vice-Chairs and Members of the Committee:

My name is Kris Kadzielawa and I am the Director of Operations for Solera Integrated Medical Solutions, Hawaii's largest provider of payment integrity services to workers' compensation and automobile insurance programs.

We support this measure.

Physician dispensing has been legal in workers' compensation and automobile injury claims for many years. However, not until the past 2-3 years has physician dispensing risen from an obscure practice to top cost driver and pain point for employers and insurers. The physician dispensing industry has apparently found a niche in the workers' compensation and automobile injury to exploit by dispensing and selling drugs at multiples of the cost obtainable through regular retail pharmacies. The workers' compensation and automobile injury physician dispensing providers and dispensing physicians have developed pricing tactics not consistent with delivery of quality, safe, and cost-effective care. Here are the key findings and pain points. The attached Appendix contains examples supporting each point:

1 Hawaii uses Redbook AWP (average wholesale price) to establish reimbursement rates for drugs. Unfortunately, this Redbook standard does not provide the expected benchmark for market prices for drugs. Furthermore, Hawaii WC and Auto have the highest drug reimbursement rate in the country as a percentage of Redbook AWP (average wholesale price) plus 40%. The term "average wholesale price" sounds like it is a calculated average of wholesale prices when in fact it is not. Redbook AWP is a number SELF-REPORTED by drug manufacturers and repackagers. Many drugs are sold by manufacturers at 2-5% of AWP to pharmacies and repackagers. In light of the <u>actual</u> wholesale prices for prescription drugs, you may want to consider limiting the markup to an amount less than 40% over AWP.

IMS
a Solera company

2 Drug repackagers appear to be competing to provide the highest end-cost drug option and dispensing physicians choose to dispense these highest-cost options. Repackagers register their repackaged drugs with Redbook naming their AWP. Then, repackagers appear to compete for physician business by having the highest AWPs for their drugs because they ultimately yield the largest markups for everyone in the physician dispensing chain.

3 Creation of tweaked compound medications essentially yielding the effect of dispensing diluted Ben-Gay or the like. Physicians prescribe and dispense compound medications (creams and salves) with formulas tweaked to differ from any other similar formula thus giving them an exclusive drug to prescribe at an exclusive price. These compounds are not FDA approved and many deaths and infections have been linked to compounding pharmacies.

4 The physician dispensing market is moving from repackaging to custom drug manufacturing sources in order to procure drugs for which high underlying AWPs can be reported to Redbook. This allows physician dispensers to circumvent drug repackaging controls already passed in many states. This measure does not address this new but rapidly growing problem.

5 There is evidence of physician dispensing with an apparent "for profit" motive. DOL decision attached.

6 Physician dispensed vs. pharmacy dispensed pricing differential is causing a dramatic increase in bill disputes between providers of service and payors. In Florida, the total number of bill disputes increased fourfold, while practitioner bill disputes increased tenfold from 2010/2011 to 2011/2012. In Hawaii, the Department of Labor indicated a current backlog of over 2,000 disputes. Perhaps the Director can provide additional information on these disputes; however, we would estimate that well over 80% are related to physician dispensed drugs.

In summary, this measure addresses some of the problems with drug costs related to physician dispensing and we support it. If requested, we would be happy to provide additional information on this important issue. Thank you for the opportunity to testify on this measure.

Mahalo,

Kris Kadziela
Director of Operations
Solera Integrated Medical Solutions
841 Bishop Street, Suite 2250
Honolulu, Hawaii 96813

APPENDIX

APPENDIX I

Hawaii uses Redbook AWP (average wholesale price) to establish reimbursement rates for drugs. Unfortunately, this Redbook standard does not provide the expected benchmark for market prices for drugs. Furthermore, Hawaii WC and Auto have the highest drug reimbursement rate in the country as a percentage of Redboak AWP (average wholesale price) plus 40%. The term "average wholesale price" sounds like it is a calculated average of wholesale prices when in fact it is not. Redbook AWP is a number SELF-REPORTED by drug manufacturers and repackagers. Many drugs are sold by manufacturers at 2-5% of AWP to pharmacies and repackagers.

Here are examples of how much the dispensing physician pays for the drugs vs. how much is billed for the drugs to workers compensation vs. how much this drug is available for at retail pharmacies in Hawaii.

Medication Dispensed	Amount Billed by Physician	Physician Paid	Billed as % of Cost	Local Pharmacy Price
Carisoprodol 350mg #30	$277.47	$4.80	5,781%	$17.79
Diclofenac Sodium 100mg #30	$200.74	$12.82	1,566%	$50.90
Naproxen 500mg #60	$188.16	$4.40	4,276%	$60.09
Omeprazole 20mg #60	$367.11	$11.42	3,215%	$130.54

Please see the attached Redbook AWP Policy and our email exchange with Redbook whereby they confirm that if we filled out the attached drug registration form, we could name an AWP price of $1,000,000.00 per pill for our repackaged "drug" and that the AWP is just a self reported number from the repackager/manufacturer.

If you would like to register a repackaged drug with Redbook, you can. Just fill out the attached form and name your own AWP (Average Wholesale Price).

THOMSON REUTERS

Revised February 17, 2004

AWP POLICY

The Average Wholesale Price (AWP) as published by Thomson Reuters is in most cases the manufacturer's[1] suggested AWP and does not necessarily reflect the *actual* AWP charged by a wholesaler. Thomson Reuters bases the AWP data it publishes on the following:

- AWP is reported by the manufacturer, **or**
- AWP is calculated based on a markup specified by the manufacturer. This markup is typically based on the Wholesale Acquisition Cost (WAC) or Direct Price (DIRP), as provided by the manufacturer, but may be based on other pricing data provided by the manufacturer.

When the manufacturer does not provide an AWP or markup formula from which AWP can be calculated, the AWP will be calculated by applying a standard 20% markup over the manufacturer supplied WAC. If a WAC is not provided, the standard markup will be applied to the DIRP. Please note that Thomson Reuters does not perform any independent analysis to determine or calculate the *actual* AWP paid by providers[2] to wholesalers. Thomson Reuters also does not independently investigate the *actual* WAC paid by wholesalers to manufacturers or DIRP paid by providers to manufacturers. Thomson Reuters relies on the manufacturers to report the values for these categories as described above.

Thomson Reuters provides a list of the manufacturers that do not provide the AWP or a markup formula. The list of these manufacturers and products is available at http://clinical.thomsonhealthcare.com/products/redbook/awp/

Additionally, an ASCII text file with this same information is available to download. For more information on this file and instructions on downloading, please contact Thomson Reuters Technical Support at http://clinical.thomsonhealthcare.com/support/request/

Please refer to this AWP Policy as you review the pricing information contained in the Thomson Reuters products.

1 The term "manufacturer" includes manufacturers, repackagers, and private labelers.
2 The term "provider" includes retailers, hospitals, physicians, and others buying either from the wholesaler or directly from the manufacturer for distribution to a patient.

From: Kathy.Voeck@thomsonreuters.com [mailto:Kathy.Voeck@thomsonreuters.com]
Sent: Wednesday, May 23, 2012 4:02 AM
To: Valladares, Maria [Audatex - Americas]
Subject: RE: RedBook questions regarding AWP

Maria,
See answers below in RED.....

Kathy Voeck
Research Analyst/Industry Liaison
Red Book Administration
Healthcare & Science

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From: Valladares, Maria [Audatex - Americas] [mailto:Maria.Valladares@audatex.com]
Sent: Tuesday, May 22, 2012 8:20 PM
To: Red Book Data Acquisitions
Cc: Kadzielawa, Kris [Audatex - Americas]
Subject: RedBook questions regarding AWP

Hello, we have a subscription to RedBook and I have the following questions:

1) Is the WAC the amount the repackager paid for the drug?WAC is Wholsale Acquistion Cost, I have no knowledge how each repackager aquires their products.
2) If a drug is identified as "Repackager Y", how do I find the Original Manufacturer and NDC#? (I notice this is information you request on your RedBook New Product Information Form)This is for RedBook reference, we do not publish this information.
3) Are all the AWP's self reported (arbitrarily set by the repackager), or does RedBook evaluate these prices and come up with an actual Average? Red Book publish the AWP reported by distributor. If AWP is not given we use our AWP markup policy to publish AWP
4) What does "Average" in AWP mean, and who identifies it in the AWP, RedBook or the entity requesting the new NDC? AWP= Average Wholesale Price
5) If I am a repackager and I submit a new NDC and identify the AWP as $1,000,000 per 1 unit, would RedBook publish it as such?YES

Thanking you in advance for your time and response,

Maria

Maria Valladares, RN, BSN, CPC, CPC-H
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RED BOOK™ NEW PRODUCT INFORMATION

IMPORTANT: Please include a Package Insert (PI) and Product Label along with all New Products or NDC changes with this form.

Product Name _____

Manufacturer Name _____

Distributor Name _____

Original Manufacturer _____

Original Manufacturer NDC _____

CHECK THE PRODUCT TYPE ☐ Trade ☐ Branded/Generic ☐ Generic ☐ Repackaged ☐ Surgical/Device ☐ Chemical for Compounding

CHECK DEA CLASS ☐ RX ☐ OTC ☐ C-II ☐ C-III ☐ C-IV ☐ C-V

Dosage Form _____ Route of Administration _____

Product Packaging *(e.g., Box, Vial, Bottle)* _____

Effective Date _____ OB Raiting _____ NDA# _____ ANDA# _____ *(Include documentation if NDA or ANDA applicable.)*

Additional Description _____

CHECK IDENTIFIER

☐ NDC ☐ UPC ☐ HRI	Unit Dose	Strength	Size	Qty	AWP	Direct	WAC	SRP
	☐ YES ☐ NO							
	☐ YES ☐ NO							
	☐ YES ☐ NO							
	☐ YES ☐ NO							

Submitted by _____ Date _____

Phone _____ E-mail _____ Fax _____

Click submit to send completed form to mdx.Red_Book_data@thomsonreuters.com

SUBMIT

If you have any questions, please call the RED BOOK support group at +1 800 724 9937
(M-TH 8:00 AM-5:00 PM MST, F 8:00 AM-2:30 PM MST) or e-mail mdx.Red_Book_data@thomsonreuters.com.

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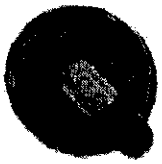
APPENDIX II

Drug repackagers appear to be competing to provide the highest end-cost drug option and dispensing physicians choose to dispense these highest-cost options. Repackagers register their repackaged drugs with Redbook naming their AWP. Then, repackagers appear to compete for physician business by having the highest AWPs for their drugs because they ultimately yield the largest markups for everyone in the physician dispensing chain.

Please see the attached marketing letter from a repackager to a dispensing physician touting the repackager's higher AWP and higher spread between cost and AWP for higher dispensing profitability.



QUALITY CARE PRODUCTS, LLC

7560 LEWIS AVENUE • TEMPERANCE, MI 48182
Phone 800-337-8603 • Fax 800-947-7921

Quality Care Products, LLC (QCP) is a Federally Licensed Drug Re-packager having a specific NDC number and a specific AWP for each of the drugs it offers for sale. QCP is registered in the Redbook, Medispan, and First Data Bank.

Enclosed, please find a copy of our Confidential Pharmacy Price List which will enable you to do a quick and private analysis regarding profitability on some of our meds by simply comparing the difference between the cost and AWP of QCP vs the difference between the cost and AWP of your current supplier.

Every day more and more Independent Pharmacies are realizing the benefits of using QCP for some of their meds – especially major brand drugs.

There are some restrictions and a few minor inconveniences that are more than offset by the significant increase in profit margins.

Also included in this packet is a QCP Update and all paperwork needed to get started with QCP. "Nothing lasts forever", so don't let this opportunity pass you by – give QCP a try.

See contact information below for questions or concerns.

Mark Holmes
Quality Care Products, LLC
(800) 284-3130, Ext. 225 or (734) 847-3847, Ext. 225
mark@lakeeriemedical.com

LATE TESTIMONY

LATE TESTIMONY

From: Matthew Matsunaga [mmatsunaga@schlackito.com]
Sent: Tuesday, February 05, 2013 6:48 PM
To: LABtestimony
Subject: Testimony in support of HB 891 and HB 1240 (with suggested amendments)

DATE: Wednesday, February 06, 2013
TIME: 8:45 A.M.
PLACE: Conference Room 329
State Capitol
415 South Beretania Street

RE: House Bill 891 and House Bill 1240

Automated HealthCare Solutions (AHCS) submits the following testimony which supports in part HB 891 and supports HB 1240. Specifically, AHCS supports:

- the provisions of HB 891 providing for a repackaging premium and providing for dispensing fees for physicians who dispense repackaged medication directly to their patients; and

- the provisions of HB 1240 providing for reimbursement for physician dispensed repackaged medication be set at original manufacturer AWP plus forty percent for brands medication or original manufacturer AWP plus sixty percent for generic medication.

I. Overview of Proposed Legislation

HB 891 proposes that medication reimbursement be priced in accordance with the medical fee schedules adopted by the director "or a lower amount for which the carrier contracts." HB 891 proposes that the price for repackaged prescription medication be calculated by multiplying the number of units dispensed by the average wholesale price (AWP) set by the original manufacturer of the underlying drug, "plus no more than forty per cent," and adding a repackaging premium. HB 891 also provides for dispensing fees for physicians who dispense repackaged medication directly to their patients.

HB 1240 proposes that the reimbursement for repackaged prescription medication be calculated by multiplying the number of units dispensed by the average wholesale price set by the original manufacturer of the underlying medication, plus forty per cent for brand medication or plus sixty per cent for generic medication, except where the carrier and the

specific provider seeking reimbursement have directly contracted between one another for a lower reimbursement amount.

II. Comments on Proposed Legislation

AHCS opposes HB 891's language which reimbursement for repackaged medication be set at the original manufacturer AWP "plus ***no more than*** forty per cent." First, the language effectively limits reimbursement to the original manufacturer's AWP by not requiring the carrier to reimburse anything above original manufacturer's AWP (put differently, the carrier can unilaterally cap reimbursement at the original manufacturer AWP). Second, the vague and arbitrary language of "plus no more than forty percent" will undoubtedly cause disagreement between providers and carriers regarding what amount (if any) above the original manufacturer's AWP should be allowed - - further inundating an already backlogged DLIR with additional billing dispute petitions.

AHCS supports HB 891's provisions providing for a repackaging premium and providing for dispensing fees for physicians who dispense repackaged medication directly to their patients, as these two provisions take into account and recognize the added costs (physician must purchase repackaged medication from a repackager) and value (point-of-care patient treatment) associated with physician dispensing.

AHCS supports the provisions of HB 1240 which clearly set reimbursement for repackaged medication at the original manufacturer's AWP plus forty per cent for brand medication and the original manufacturer's AWP plus sixty per cent for generic medication. Further, AHCS supports the provision of HB 1240 which allows for an agreed-upon lower reimbursement rate pursuant to a contract between a carrier and a provider for the lower, agreed-upon rate. Unlike the language of HB 891, HB 1240 makes it clear that there must be privity between a specific carrier and a specific provider for a lower reimbursement rate in order for a lower, agreed-upon rate to apply. AHCS believes this language ensures that there can be no unilateral imposition of a rate arbitrarily set by the carrier by virtue of having an unrelated third party contract rate.

III. Additional Suggestions

In addition to the foregoing comments, AHCS suggests that a $500 service fee, payable to the State of Hawaii general fund, be assessed on a per claim basis against carriers who engage in "improper reimbursement tactics" and/or negotiate in bad faith. AHCS further suggests that there be a rebuttable presumption that a carrier is engaging in "improper reimbursement tactics" when the DLIR has determined that a carrier has unreasonably reimbursed a provider, or its assignee, more than [**X**] times in a calendar year. While AHCS generally supports the provision in Hawaii Administrative Rule § 12-15-94(c) which allows for "a service fee of up to

$500 payable to the State of Hawaii General Fund [to] be assessed at the discretion of the director against either or both parties who fail to negotiate in good faith," we do not feel that it goes far enough to deter improper conduct. Accordingly, AHCS recommends that a $500 fee be assessed on a per claim basis against carriers engaging in improper reimbursement tactics and/or negotiating in bad faith. This will not only help to eliminate the "games" played by carriers seeking to avoid payment but also should alleviate the DLIR from additional bill dispute petitions filed by providers who are legitimately seeking reimbursement for their services.

Finally, for the same reason, AHCS also supports codifying the provision set forth in § 12-15-94(c) which states that "[i]f more than sixty calendar days lapse between the employer's receipt of an undisputed billing and date of payment, payment of billing shall be increased by one per cent per month of the outstanding balance."

Thank you for your consideration.

Jennifer Maurer, Esq.
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Submitted by AHCS' attorney:

Matthew M. Matsunaga

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