NEIL ABERCROMBIE
GOVERNOR

DWIGHT Y. TAKAMINE
DIRECTOR

JADE T. BUTAY
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813
http://labor.hawaii.gov

March 11, 2014

To: The Honorable Mark Nakashima, Chair,
The Honorable Kyle T. Yamashita, Vice Chair, and
Members of the House Committee on Labor & Public Employment

Date: Tuesday, March 11, 2014
Time: 9:30 a.m.
Place: Conference Room 309, State Capitol

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

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

I. OVERVIEW OF PROPOSED LEGISLATION

The DLIR supports the intent of this proposal that seeks to control the prescriptive drug costs in the Hawaii workers' compensation system and offers an amendment. SB 2365, SD2 proposes a new section in chapter 386, Hawaii Revised Statutes, by:

- Setting the payment for all forms of prescription drugs and compounded medications including repackaged and relabeled drugs at an unspecified percentage of the average wholesale price as set by the original manufacturer of the dispensed prescription drug identified by its National Drug Code as published in the Medi-Span Master Drug Database, as of the date of purchase, except if contracted for a lower amount;
- Providing that payment for a prescription drug that is not available at a retail pharmacy within the State shall not be reimbursed.
- Providing equivalent generic pharmaceuticals to be substituted for brand name unless the physician certifies the employee's condition will not tolerate equivalent generic pharmaceuticals.
- Adding a definition of "equivalent generic drug product."

II. CURRENT LAW

Workers' Compensation Medical Fee Schedule (WCMFS) Administrative Rule, Section 12-15-55 Drugs, supplies and materials, allows for prescription drugs to be

reimbursed at the average wholesale price as listed in Red Book 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 Red Book followed by the average wholesale price as listed at time of purchase by the provider of service.

In addition, approved generics shall be substituted for brand name pharmaceuticals unless the prescribing physician certifies no substitution is permitted because the injured employee's condition will not tolerate a generic preparation.

The current statute and rules do not explicitly address the reimbursement of repackaged, relabeled and compound medication, although that is how the DLIR understands the intent of the current law and applies it in billing disputes when such types of medications are involved.

III. COMMENTS ON THE SENATE BILL

DLIR understands that the Medi-span index is the one most commonly used by Hawaii's pharmacies. However, the department is still in the process of analyzing Medi-span vs. the Redbook and cost implications of switching to another index. The department intends to inform the Committee after finishing the analysis and arriving at a recommendation.

The department supports the proposal that if a prescription drug is not available at a retail pharmacy within the State that it shall not be reimbursed.

The department offers the following amendment (Ramseyer of current language) for consideration starting on page 3, line 15:

(d) All pharmaceutical claims submitted for repackaged, [~~or~~] relabeled prescription medications, or compound medications shall include the National Drug Code of the original manufacturer.

The department supports measures that will clarify reimbursement rates for repackaged, relabeled and compound medication, which are currently not addressed in the workers' compensation law or regulations. Clarifying rates may ultimately reduce the amount of billing disputes involving the correct payments for prescription, repackaged and compound drugs. However, the department cautions that the unspecified percent should not be greater than the current 40% over the average wholesale price.

The department is hopeful that with further clarification of the issues and continued

deliberations, this bill will address the issues of fairer reimbursement of prescription medications and lower the medical costs in Hawaii's workers' compensation system.

NEIL ABERCROMBIE
GOVERNOR

BARBARA A. KRIEG
DIRECTOR

LEILA A. KAGAWA
DEPUTY DIRECTOR

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

March 10, 2014

TESTIMONY TO THE
HOUSE COMMITTEE ON LABOR

For Hearing on Tuesday, March 11, 2014
9:30 a.m., Conference Room 309

BY

BARBARA A. KRIEG
DIRECTOR

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

TO CHAIRPERSON MARK NAKASHIMA AND MEMBERS OF THE COMMITTEE:

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

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

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

First, this proposal is generally consistent with our past efforts to cap repackaged drug markups at 140% of the average wholesale price (AWP) as set by the original manufacturer. The voluminous testimony in support of H.B. 891, Relating to Workers'

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

Second, in order to reasonably limit our reimbursements for prescription medications that ultimately impact our workers' compensation claims costs we recommend that: 1) the reimbursement percentage to be inserted into subsections (b), (c), and (d) should not be more than the current 140% set forth in the WCMFS; and 2) the "major retail pharmacy" language from S.D. 1 should be restored in this bill.

Third, we wish to review the recommendations of the DLIR with regards to using the American Druggist Red Book versus the Medi-Span Master Drug Database before we take a position on the preferred index for determining the original manufacturer's AWP. We note that the DLIR has always cited the Red Book in the WCMFS.

We believe passage of this bill will have several benefits, including reducing the State's costs for medical care, services, and supplies; reducing the number of billing disputes brought before the Department of Labor and Industrial Relations, which testified was up to 2,400 recently; and removing potential financial incentives to over-prescribe medications to claimants.

Thank you for the opportunity to testify in support of this measure.

DEPARTMENT OF HUMAN RESOURCES

CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR

CAROLEE C. KUBO
DIRECTOR

NOEL T. ONO
ASSISTANT DIRECTOR

March 11, 2014

The Honorable Mark M. Nakashima, Chair
and Members of the Committee
on Labor and Public Employment
The House of Representatives
State Capitol, Room 309
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Nakashima and Members of the Committee:

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

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

1. Page 2, Line 16. We request that "shall be" be amended to "shall not exceed." This language is consistent with the language in Hawaii Revised Statutes Section 386-21(c) with respect to charges under the Medicare Resource Based Relative Value Scale. The phrase "except where the employer or carrier, or any entity acting on behalf of the employer or carrier, directly contracts with the provider or provider's assignee for a lower amount" as found on page 2, line 20 to page 3, line 1, can then be deleted accordingly.

It is important that insurance carriers and self-insured entities such as the State and City not be mandated to pay a particular percentage of average wholesale price for prescription medication. Retail pharmacies currently do not charge the maximum amount that is allowed under the workers' compensation administrative rules and there are no formal contracts between the parties with respect to those transactions. As a result, companies will be forced to pay higher amounts for prescription drugs purchased from retail pharmacies unless the foregoing amendment is made to S.B. 2365, SD2.

2. Page 3, Lines 1 – 3. We recommend the last portion of subsection (b) be amended to read "provided that payment for any prescription drug that is not available at a major retail pharmacy within the State shall not be reimbursed." We further recommend that the following definitions for "Major retail pharmacy" and "Available" also be included. These changes are critical in order to control the costs of prescription medication in Hawaii.

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

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

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

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

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

3. We recommend that all references to "Medi-Span Master Drug Database" be changed to "Red Book: Pharmacy's Fundamental Reference." There is no reason why the reference should be changed at this time. The local industry is already familiar with Red Book. Changing the standard will also require that DLIR and others in the workers' compensation industry incur significant costs to obtain the necessary rights to utilize the new reference.

The City supports Senate Bill No. 2365, SD2, with the foregoing amendments. We believe that with these changes, the measure will reasonably restrict the costs associated with repackaged or relabeled drugs and compound medications that are currently not regulated.

Thank you for the opportunity to testify.

Sincerely,

Carolee C. Kubo

Carolee C. Kubo
Director

Chamber of Commerce HAWAII
The Voice of Business

Testimony to the House Committee on Labor and Public Employment
Tuesday, March 11, 2014 at 9:30 A.M.
Conference Room 309, State Capitol

RE: SENATE BILL 2365 SD2 RELATING TO INSURANCE CLAIMS

Chair Nakashima, Vice Chair Yamashita, and Members of the Committee:

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

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

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

SB2365 SD2 seeks to clarify existing rules in motor vehicle and workers' compensation insurance by outlining the intent of the rules to reimburse drugs at the original manufacturer's national drug code plus an unspecified percentage. The reimbursement premium is currently at 40%. In addition, the bill does not allow reimbursement for prescription drugs not sold in a major retail pharmacy.

We respectfully ask that the committee consider the following amendments:

1. New subsection (b), regarding payment. The language should be changed back to "shall not exceed one hundred forty per cent of the average wholesale price". Requiring payers to reimburse ***at*** AWP+40% will result in across the board increases for both WC and Auto claims since many retail pharmacies currently charge *less than* AWP+40%.

2. New subsection (b) regarding no reimbursement if the drug is not available at a retail pharmacy. In this draft, the word, "major" was removed and should be reinserted to read "major retail pharmacy." The purpose of this clause is to ensure that drugs that are

1132 Bishop Street, Suite 402 • Honolulu, Hawaii 96813 • Phone: (808) 545-4300 • Facsimile: (808) 545-4369

reimbursed are widely accepted and therefore available in a *major* retail pharmacy. By eliminating the word "major", the limitation has no impact and would allow a very small pharmacy to dispense a designer drug that is not widely used and may be at a very high price.

"Major retail pharmacy" should also be defined and the definition in the original bill and SB 2365, SD1 should be reinserted and reads as follows:

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

We ask that you consider the bill with the above proposed amendments. Thank you for the opportunity to express our views on this matter.

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

Pauahi Tower, Suite 2010
1003 Bishop Street
Honolulu, Hawaii 96813
Telephone (808) 525-5877

Alison Powers
Executive Director

TESTIMONY OF ALISON POWERS

HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT
Representative Mark Nakashima, Chair
Representative Kyle Yamashita, Vice Chair

Tuesday, March 11, 2014
9:30 a.m.

SB 2365, SD2

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

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

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

We respectfully request the following amendments:

1. New subsection (b), regarding payment. The language should be changed back to "shall not exceed one hundred forty per cent of the average wholesale price". Requiring payers to reimburse ***at*** AWP+40% will result in across the board increases for both WC and Auto claims since many retail pharmacies currently charge *less than* AWP+40%.

2. New subsection (b) regarding no reimbursement if the drug is not available at a retail pharmacy. In this draft, the word, "major" was removed and should be reinserted to read "major retail pharmacy." The purpose of this clause is to ensure that drugs that are reimbursed are widely accepted and therefore available in a *major* retail pharmacy. By eliminating the word "major", the limitation has no impact and would allow a very small pharmacy to dispense a designer drug that is not widely used and may be at a very high price.

   "Major retail pharmacy" should also be defined and the definition in the original bill and SB 2365, SD1 should be reinserted and reads as follows:

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

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

HAWAII MEDICAL ASSOCIATION
1360 S. Beretania Street, Suite 200, Honolulu, Hawaii 96814
Phone (808) 536-7702 Fax (808) 528-2376 www.hmaonline.net

DATE: Tuesday, March 11, 2014
TIME: 9:30 AM
PLACE: Conference Room 309

TO:
COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
Rep. Mark M. Nakashima, Chair
Rep. Kyle T. Yamashita, Vice Chair

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

RE: SB 2365 RELATING TO INSURANCE CLAIMS

POSITION: Support with amendments

Proposed Changes:

- **Change AWP based on "*date of purchase by the provider of service*" to "*date of dispensing*."**
- **Reinsert 140% into the blanks.**

Reasons for Changes:

- Existing administrative rules allow pharmaceuticals to be charged to insurance carriers at up to one hundred forty percent of the average wholesale price listed in the Red Book: Pharmacy's Fundamental Reference.
- The language should be amended to reflect "date of dispensing" as this was ***previously agreed upon by the stakeholders*** (including the physician and payer community).
- AWP at the time of purchase should be irrelevant to reimbursement because it has nothing to do with when the medication/service was provided to the patient. As is the case with most commercial business and industry, the value of a good or service is determined by its value at the time it is provided to the consumer or, as is the case here, the patient. Just as physicians bill for services rendered on the date provided to a patient, so should physicians bill for (and be reimbursed for) medications dispensed on the date the medication is provided to the patient.

Tying payment to the "date of [medication] dispensing" – as initially provided for in SB 2365 – has been deemed acceptable language by stakeholders in the physician and payor community, as it is

already common industry practice to submit claims for reimbursement for prescription medication which reflect the average wholesale price on the date the medication is dispensed to a patient (or customer as may be the case with a pharmacy). To alter the process for determining payment going forward only further complicates the reimbursement process this legislation aims to simplify. For those entities, which currently bill for prescription medications electronically, the proposed language may force those entities (pharmacies, PBMs, third party billing entities, etc.) to overhaul their entire IT infrastructure and/or claims processing systems to accommodate this unnecessary requirement.

In addition, the date that the medication was purchased by the provider is irrelevant to appropriate reimbursement, as the date of purchase is not an accurate reflection of the medication's value when the medication is actually sold to the patient. As is the case with almost every other commercial business and industry, the value of a good or service is determined by its value at the time it is sold to the consumer, not by the value of the good when it was acquired by the seller.

For example, each time one purchases groceries, the price(s) of said groceries is always changing and the charge incurred is the value of those goods at the time of sale to the end user, not at the time the food was purchased from the farmer. This change in price is due to economic factors such as supply and demand, the time value of money and the state of the world's economy as a whole. To require a grocer to only charge an amount equal to the value of the goods on the date that said goods were purchased by the grocer, which could be several weeks or months prior to the sale to the consumer, is nonsensical and eliminates the grocer's ability to take into consideration the applicable economic factors that determine the true value of the groceries on the date of sale to the consumer. The same is true of medication that is sold by a physician.

Here, just like when one purchases his or her groceries each week, the value of the medication should be determined by its price at the time it is dispensed/sold to the patient, as the value of said medication is able to fluctuate (whether up or down) during the period of purchase by the provider and sale to the patient based on the several economic factors that drive our economy as whole. This same concept also holds true in other areas of medicine. Just as physicians bill for services rendered on the date the services are provided to a patient, so should physicians bill for – and be reimbursed for – medication on the date it is provided to the patient. The bill, as currently written, frustrates the intent to simplify the bill review and reimbursement process by creating an unnecessary and burdensome hurdle for providers to incur by requiring them to look backwards to determine and prove the AWP on the date of purchase before they can receive accurate reimbursement, rather than using the AWP on the date of dispensing, which will be easily accessible in the current edition of Medi-Span.

Thanks you for the opportunity to provide comments on this measure.

Property Casualty Insurers
Association of America
Advocacy. Leadership. Results.

To: The Honorable Mark M. Nakashima, Chair
The Honorable Kyle T. Yamashita, Vice Chair
House Committee on Labor and Public Employment

From: Mark Sektnan, Vice President

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

Date: Tuesday, March 11, 2014
9:30 a.m., Conference Room 309

Aloha Chair Nakashima, Vice Chair Yamashita and Members of the Committee:

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

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

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

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

PCI believes that reimbursement for compounded drugs should be based on the NDC codes of the original manufacturer of each active ingredient with no additional reimbursement for ingredients with no NDC code. There should be only one dispensing fee and not a dispensing fee for each active ingredient.

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

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

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

PCI requests your favorable consideration of this bill.

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Hawaii State Legislature
House Committee on Labor and Public Employment
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

March 9, 2014

Filed via electronic testimony submission system

RE: SB 2365, SD2, Relating to Insurance Claims - NAMIC's Written Testimony for Committee Hearing

Dear Representative Mark M. Nakashima, Chair; Representative Kyle T. Yamashita, Vice Chair; and members of the House Committee on Labor and Public Employment:

Thank you for providing the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to your committee for the March 11, 2014, public hearing. Unfortunately, I will not be able to attend the public hearing, because of a previously scheduled professional obligation.

NAMIC is the largest property/casualty insurance trade association in the country, serving regional and local mutual insurance companies on main streets across America as well as many of the country's largest national insurers.

The 1,400 NAMIC member companies serve more than 135 million auto, home and business policyholders and write more than $196 billion in annual premiums, accounting for 50 percent of the automobile/homeowners market and 31 percent of the business insurance market. NAMIC has 69 members who write property/casualty and workers' compensation insurance in the State of Hawaii, which represents 30% of the insurance marketplace.

Through our advocacy programs we promote public policy solutions that benefit NAMIC companies and the consumers we serve. Our educational programs enable us to become better leaders in our companies and the insurance industry for the benefit of our policyholders.

NAMIC's workers' compensation and auto insurance members support SB 2365, SD2, as a reasonable and balanced pro-insurance consumer and pro-consumer protection legislative proposal. Specifically, NAMIC supports SB 2365, SD2, because it will facilitate the creation of thoughtful and appropriate pharmaceutical cost-containment controls that are necessary to prevent the ever-increasing cost of medications from adversely impacting the affordability of

workers' compensation insurance for small businesses and their employees, and the cost of state mandated automobile insurance coverage for consumers.

NAMIC believes that the proposed legislation fairly balances the needs of all stakeholders, by allowing for reasonable retail price markups, providing for the use of a reasonable and reliable objective pricing standard, and seting forth clear guidelines for how to address pricing caps for repackaged/relabeled drugs and compound drugs. NAMIC appreciates the fact that the bill has been amended to remove the originally stated cap of 140%, so as to facilitate further legislative discourse on the subject. NAMIC respectfully recommends that the original 140% cap or a comparable cap be specified in the bill so as to accomplish the reasonable and necessary cost-containment objects of the bill.

Additionally, NAMIC supports, as being consistent with the national trend on the prescribing of medications, the amendment that "equivalent generic drug products shall be substituted for brand name pharmaceuticals unless the prescribing physician certifies that no substitution shall be prescribed because the injured employee's condition does not tolerate an equivalent generic drug product."

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

In closing, NAMIC respectfully requests that the House Committee on Labor and Public Employment "**vote yes**" on SB 2365, SD2, because it is a reasonable and appropriate pro-insurance consumer, pro-injured worker, and pro-medication pricing fraud prevention measure.

Thank you for your time and consideration. Please feel free to contact me at 303.907.0587 or at crataj@namic.org, if you would like to discuss NAMIC's written testimony.

Respectfully,

Christian John Rataj, Esq.
NAMIC Senior Director – State Affairs, Western Region

To: **Rep. Mark Nakashima, Chair**
Rep. Kyle T. Yamashita, Vice Chair
Members of the Committee on Labor and Public Employment

Date: **Tuesday, March 11, 2014**
Time: **9:30 am**
Place: **Conference Room 309**
State Capitol
415 South Beretania Street

COMMENTS ON SENATE BILL 2365 SD2

Automated HealthCare Solutions (AHCS) submits the following testimony related to Senate Bill 2365 SD2:

AHCS supports the intent of SB 2365 SD2, which is to prevent drug prices from becoming an unreasonable cost driver of health care in workers' compensation and motor vehicle claims, but opposes specific provisions which are detailed below.

Until amended by SB 2365 SD2, legislation seeking to curtail prescription medication costs in the workers' compensation system tied reimbursement to one hundred forty per cent (140%) of the average wholesale price set by the original manufacturer of the dispensed prescription drug as identified by its National Drug Code. *See SB 2365; SB 2365 SD1*. SB 2365 SD 2 removes the 140% reimbursement rate and instead provides that "[p]ayment for all forms of prescription drugs including repackaged and relabeled drugs shall be _____ per cent of the average wholesale price set by the original manufacturer of the dispensed prescription drug . . ."

AHCS recommends that this Committee amend this provision to ***set reimbursement at 140% of the average wholesale price set by the original manufacturer*** (as previously agreed upon by stakeholders working to achieve resolution on this issue).

AHCS opposes the language in SB 2365 SD2, which ties reimbursement for prescription drugs to the medication's average wholesale price "as of the date of purchase by the provider of service." Respectfully, AHCS recommends this Committee amend the provision to tie

reimbursement to the medication's average wholesale price "***as of the date of dispensing***." Tying payment to the "date of [medication] dispensing" – as initially provided for in SB 2365 – has been deemed acceptable language by stakeholders in the physician and payor community, as it is already common industry practice to submit claims for reimbursement for prescription medication which reflect the average wholesale price on the date the medication is dispensed to a patient (or customer as may be the case with a pharmacy)[1]. To alter the process for determining payment going forward only further complicates the reimbursement process this legislation aims to simplify. For those entities which currently bill for prescription medications electronically, the proposed language may force those entities (including pharmacies, PBMs, third party billing entities, etc.) to overhaul their entire IT infrastructure and/or claims processing systems to accommodate this unnecessary requirement.

In addition, the date that the medication was purchased by the provider is irrelevant to appropriate reimbursement, as the date of purchase is not an accurate reflection of the medication's value when the medication is actually sold to the patient. As is the case with almost every other commercial business and industry, the value of a good or service is determined by its value at the time it is sold to the consumer, not by the value of the good when it was acquired by the seller.

For example, each time one purchases groceries, the price(s) of said groceries is always changing and the charge incurred is the value of those goods at the time of sale to the end user, not at the time the food was purchased from the farmer. This change in price is due to economic factors such as supply and demand, the time value of money and the state of the world's economy as a whole. To require a grocer to only charge an amount equal to the value of the goods on the date that said goods were purchased by the grocer, which could be several weeks or months prior to the sale to the consumer, is nonsensical and eliminates the grocer's ability to take into consideration the applicable economic factors that determine the true value of the groceries on the date of sale to the consumer. The same is true of medication that is sold by a physician.

Here, just like when one purchases his or her groceries each week, the value of the medication should be determined by its price at the time it is dispensed/sold to the patient, as the value of said medication is able to fluctuate (whether up or down) during the period of purchase

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

by the provider and sale to the patient based on the several economic factors that drive our economy as whole. This same concept also holds true in other areas of medicine. Just as physicians bill for services rendered on the date the services are provided to a patient, so should physicians bill for – and be reimbursed for – medication on the date it is provided to the patient. The bill, as currently written, frustrates the intent to simplify the bill review and reimbursement process by creating an unnecessary and burdensome hurdle for providers to incur by requiring them to look backwards to determine and prove the AWP on the date of purchase before they can receive accurate reimbursement, rather than using the AWP on the date of dispensing, which will be easily accessible in the current edition of Medi-Span.

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

Jennifer Maurer
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WIMAH

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LATE

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THE POWER OF HEALING

MARCH 11, 2014

COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

SENATE BILL 2365 SD2 RELATING TO INSURANCE CLAIMS

LIMITS THE REIMBURSEMENT PAYMENTS OF PRESCRIPTION MEDICATIONS, INCLUDING RELABELED OR REPACKAGED PRESCRIPTION MEDICATION, IN WORKERS' COMPENSATION CLAIMS. REQUIRES MOTOR VEHICLE INSURANCE BENEFITS TO AUTOMATICALLY ADOPT THE PRESCRIPTION DRUG PRICING PROTECTIONS ASSOCIATED WITH THE WORKERS' COMPENSATION SUPPLEMENTAL MEDICAL FEE SCHEDULE, UNLESS OTHERWISE MODIFIED BY THE INSURANCE COMMISSIONER THROUGH RULEMAKING. EFFECTIVE 07/01/2050. (SD2)

WORK INJURY MEDICAL ASSOCIATION OF HAWAII SUPPORTS THE INTENT OF SENATE BILL 2365 SD2. WE FEEL THERE ARE SOME ISSUES WITHIN THIS BILL THAT NEEDS TO BE RESOLVED.

WE SUGGEST THE REIMBURSEMENT RATE BE SET AT 140 PERCENT OF THE AVERAGE WHOLESALE PRICE BY THE ORIGINAL MANUFACTURER.

WE ALSO DO NOT AGREE WITH THE REIMBURSEMENT FOR PRESCRIPTION DRUGS "AS OF THE DATE OF PURCHASE BY THE PROVIDER OF SERVICE." WE RECOMMEND THAT PAYMENT BE TIED TO DATE OF DISPENSING (MEDICATION).

RESOLUTION ON THESE MATTERS WOULD BE APPRECIATED.

GEORGE M. WAIALEALE
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The Twenty-Seventh Legislature
Regular Session of 2014

HOUSE OF REPRESENTATIVES
Committee on Labor & Public Employment
Rep. Mark M. Nakashima, Chair
Rep. Kyle T. Yamashita, Vice Chair
State Capitol, Conference Room 309
Tuesday, March 11, 2014; 9:30 a.m.

LATE

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

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

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

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

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

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

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

Thank you for considering our comments.