

Honolulu, Hawaii

FEB 14 2014

RE: S.B. No. 2365
S.D. 1

Honorable Donna Mercado Kim
President of the Senate
Twenty-Seventh State Legislature
Regular Session of 2014
State of Hawaii

Madam:

Your Committee on Judiciary and Labor, to which was referred
S.B. No. 2365 entitled:

"A BILL FOR AN ACT RELATING TO INSURANCE CLAIMS,"

begs leave to report as follows:

The purpose and intent of this measure is to amend the law
relating to the furnishing of medical care, services, and supplies
under workers' compensation claims by:

- (1) Specifying requirements for the furnishing of drugs in
addition to medical care, services, and supplies to an
employee who sustains a work injury;
- (2) Establishing a reimbursement ceiling that does not
exceed one hundred forty percent of the average
wholesale price set by the original manufacturer of the
prescription drug as identified by its National Drug
Code and published in the Red Book: Pharmacy's
Fundamental Reference as of the date of dispensing for
all prescription drugs, including repackaged and
re-labeled drugs;
- (3) Requiring that any prescription drug not available at a
major retail pharmacy is not reimbursable unless
specifically approved by the Director of Labor and
Industrial Relations through administrative rules;
- (4) Adding the definition of "major retail pharmacy";



- (5) Establishing a reimbursement ceiling that does not exceed one hundred forty percent of the average wholesale price by gram weight set by the original manufacturer of the prescription drug as identified by its National Drug Code and published in the Red Book: Pharmacy's Fundamental Reference as of the date of compounding for each underlying prescription drug contained in compounded medications;
- (6) Requiring that all pharmaceutical claims submitted for repacked or relabeled prescription medications include the National Drug Code of the original manufacturer; and
- (7) Establishing a reimbursement ceiling that does not exceed one hundred forty percent of the average wholesale price set by the original manufacturer of the prescription drug as identified by its National Drug Code and published in the Red Book: Pharmacy's Fundamental Reference that is most closely related to the underlying prescription drug if the original manufacturer of an underlying prescription drug used in the repackaged or relabeled prescription drugs or compounded medications is unknown.

Your Committee received testimony in support of this measure from the Department of Labor and Industrial Relations; Department of Human Resources Development; Department of Human Resources, City and County of Honolulu; Hawaii Insurers Council; Property Casualty Insurers Association of America; The Chamber of Commerce of Hawaii; Government Employees Insurance Company; Automated HealthCare Solutions; and Work Injury Medical Association of Hawaii.

Your Committee finds that Hawaii's existing reimbursement rates for pharmaceuticals in workers' compensation claims are among the highest in the nation for brand and generic products. 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. However, existing law and administrative rules do not address the reimbursement of repackaged, relabeled, or compounded medications. As a result, third-party companies are able to buy prescription drugs in bulk; repack, relabel, or compound the medications; and attach their own National Drug Code



to the repackaged, relabeled, or compounded medications with average wholesale prices that are higher than the average wholesale prices of the original manufacturers. Insurance carriers are then billed at one hundred forty percent of the higher average wholesale price, which results in higher charges.

Establishing a reimbursement ceiling for repackaged, relabeled, or compound medications at one hundred forty percent of the average wholesale price set by the original manufacturer will assist in reducing the State's costs for workers' compensation claims related to medical care, services, drugs, and supplies. The Department of Labor and Industrial Relations testified that it is currently handling over two thousand workers' compensation disputes related to repackaged medications. This measure will assist the Department in reducing the number of these disputes.

Your Committee has amended this measure by adopting the language suggested by the Department of Labor and Industrial Relations and Automated Health Care Solutions to:

- (1) Set the reimbursement price for repackaged, relabeled, and compound prescription drugs at exactly, rather than up to, one hundred forty percent of the average wholesale price set by the original manufacturer of the prescription drug;
- (2) Adopt the Medi-Span Master Drug Database as the official prescription medication pricing source book rather than the Red Book: Pharmacy's Fundamental Reference because Medi-Span is a more widely used and comprehensive source;
- (3) Clarify that the reimbursement price for repackaged or relabeled prescription drugs is set at the date of purchase rather than date of dispensing;
- (4) Allow the reimbursement price for repackaged, relabeled, and compound prescription drugs to be a lower amount if the employer or carrier, or any entity acting on behalf of the employer or carrier, directly contracts with the provider or the provider's assignee;
- (5) Delete the language that would have prohibited reimbursement for any prescription drug not available at a major retail pharmacy unless specifically approved by

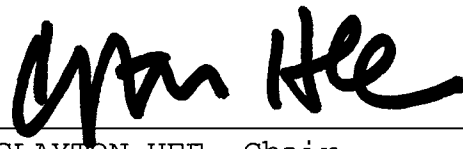


the Director of Labor and Industrial Relations through administrative rules and replace it with language that allows the Director to limit the reimbursement of a specific prescription drug that is not available at a major retail pharmacy;

- (6) Insert language to set the reimbursement price for over the counter medications dispensed by a licensed practitioner at one hundred twenty percent of the average wholesale price set by the original manufacturer of the dispensed prescription drug as identified by its National Drug Code and published in the Medi-Span Master Drug Database as of the date of purchase by the provider of service;
- (7) Allow the reimbursement price for over the counter medications dispensed by a licensed practitioner to be a lower amount if the employer or carrier, or any entity acting on behalf of the employer or carrier, directly contacts with the provider or the provider's assignee; and
- (8) Require generic pharmaceuticals to be substituted for brand name pharmaceuticals unless the prescribing physician certifies that a brand name pharmaceutical is necessary.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2365, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2365, S.D. 1, and be referred to the Committee on Commerce and Consumer Protection.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,

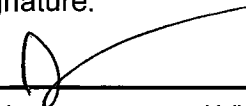


CLAYTON HEE, Chair



The Senate
 Twenty-Seventh Legislature
 State of Hawai'i

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:* SB 2365	Committee Referral: JDL, CPN	Date: 2/1/14		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
HEE, Clayton (C)	✓			
SHIMABUKURO, Maile S.L. (VC)				✓
GABBARD, Mike	✓			
GALUTERIA, Brickwood	✓			
IHARA, Jr., Les	✓			
SOLOMON, Malama	✓			
SLOM, Sam	✓			
TOTAL	6			1
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

***Only one measure per Record of Votes**