



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



January 28, 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, January 28, 2014

Time: 8:30 a.m.

Place: Conference Room 309, State Capitol

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

**Re: H.B. No. 1960 Relating to Drug Pricing in Workers' Compensation  
and Motor Vehicle Insurance Claims**

**I. OVERVIEW OF PROPOSED LEGISLATION**

HB 1960 proposes to amend Section 386-21, Hawaii Revised Statutes, by:

- Placing a price cap on prescription drugs to not exceed one hundred forty percent (140%) 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 Red Book: Pharmacy's Fundamental Reference, as of date of dispensing;
- Providing that any prescription drug not available at a major retail pharmacy within the State will not be reimbursable unless specifically approved by the director through rulemaking and;
- Determining reimbursements for compound medications, repackaged or relabeled drugs.

The DLIR supports the intent of this proposal that seeks to control the prescriptive costs in the Hawaii workers' compensation system. However, the measure as drafted is ambiguous, which would likely burden the department with bill disputes. DLIR notes that it currently has over 2,400 bill disputes before the director. The department's specific recommendation follow below.

## **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.

## **III. COMMENTS ON THE HOUSE BILL**

The department supports the intent of the measure, but has the following concerns.

This bill proposes that if a drug is not available at a major retail pharmacy within the State, it will not be reimbursable unless approved by the director through rulemaking in accordance with section 91-3. DLIR is unsure why a medication prescribed for workers' compensation would not be available at major retail pharmacies. This proposal will also require the department to conduct a public hearing to promulgate rules to adopt a specific drug(s) each time it has been determined that a drug is not available. The department is already challenged to update the Medical Fee Schedule on an annual basis; in fact, it has only updated the MFS once in the last three years due to the lack of resources and staffing.

A proposal (HB1974) to require the department to conduct public hearings annually to update the Workers' Compensation Medical Fee Schedule is based upon the recommendations of the State Auditor's Report No. 13-10, "*A Report on Methodology for the Department of Labor & Industrial Relations' Workers' Compensation Medical Fee Schedule.*" The DLIR's support of that proposal is predicated upon the staffing resources and funding recommendations suggested by the State Auditor.

Furthermore, it would be a great strain on the department if the director would also be required to go through the rulemaking process to adopt a specific drug each time it is not available at a major retail pharmacy. The department does not have the staffing and points out that this would certainly be time consuming and a costly burden on the department.

This proposal also does not take into account reimbursement for generic medication. Section 12-15-55(c) of the WCMFS Administrative Rules requires approved generics to be substituted for brand name drugs unless the prescribing physician certifies the employee's condition will not tolerate generic preparations. This proposal will not allow generic medications and require physicians to prescribe costlier brand name drugs when a less expensive appropriate generic drug is available.

The department, in consultation with the Department of the Attorney General, also believes the proposal references the following key words that should be defined to avoid confusion and assumptions:

1. Average Wholesale Price (AWP)
2. Original Manufacturer
3. National Drug Code
4. Date of Dispensing
5. Repackaged Drugs
6. Relabeled Drugs
7. Compound Medication
8. Underlying Drug Product

The department further notes that the title may possibly contain two subjects.

The department supports measures that will clarify reimbursement rates for repackaged, relabeled and compound medication, which are currently not explicitly 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 believes that further clarification of the definition of the key words listed above is necessary to make this measure effective.

Importantly, the word "drugs" in the title and in subsection (a) should not be added to these parts of the statute, in fact, the department recommends creating a separate section for all the amendments in this proposal.

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 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

January 27, 2014

**TESTIMONY TO THE  
HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT**

For Hearing on Tuesday, January 28, 2014  
8:30 a.m., Conference Room 309

BY

BARBARA A. KRIEG  
DIRECTOR

**House Bill No. 1960**  
**Relating to Drug Pricing in Workers' Compensation**  
**and Motor Vehicle Insurance Claims**

TO CHAIRPERSON MARK NAKASHIMA AND MEMBERS OF THE COMMITTEE:

The purpose of H.B. 1960 is to establish price caps for the Hawaii workers' compensation and motor vehicle insurance charges for prescription drugs.

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.

DHRD **strongly supports** this bill, with an amendment as indicated below.

This proposal is 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 explained 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 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 be otherwise be billed using the original NDC and AWP.

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 we understand currently stands at about 2,000; and removing potential financial incentives to over-prescribe medications to claimants.

DHRD suggests that this measure be amended to reflect the language of S.B. 2365, which seeks to address the same problem. The Senate bill is largely identical to H.B. 1960 and included the input of many different stakeholders in the workers' compensation community.

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

**Testimony to the House Committee on Labor and Public Employment  
Tuesday, January 28, 2014 at 8:30 A.M.  
Conference Room 309, State Capitol**

**LATE**

**RE: HOUSE BILL 891 RELATING TO WORKERS' COMPENSATION  
DRUGS**

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

The Chamber of Commerce of Hawaii ("The Chamber") **strongly supports** HB 1960 Relating to Drug Pricing in Workers' Compensation and Motor Vehicle Insurance Claims.

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.

This measure establishes price caps for the Hawaii workers' compensation insurance system for drugs. 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 more, over the average wholesale price after the drugs were repackaged, re-labeled, and distributed by physicians. 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.

We strong urge that the committee pass this measure. Thank you for the opportunity to express our views on this matter.

# WIMAH

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



MAULI OLA  
THE POWER OF HEALING

JANUARY 28, 2014

## COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

### HOUSE BILL 1960 RELATING TO DRUG PRICING IN WORKERS' COMPENSATION AND MOTOR VEHICLE CLAIMS.

ESTABLISHES PRICE CAPS FOR THE HAWAII WORKERS' COMPENSATION AND MOTOR VEHICLE INSURANCE CHARGES FOR PRESCRIPTION DRUGS.

WORK INJURY MEDICAL ASSOCIATION OF HAWAII SUPPORTS THE IDEA OF HOUSE BILL 1960. WE FEEL THERE ARE MANY ISSUES WITHIN THIS BILL THAT NEED TO BE RESOLVED. THERE ALSO NEEDS TO BE MORE SPECIFICS REGARDING REIMBURSEMENTS.

THERE NEEDS TO BE A BETTER WAY FOR PHYSICIANS AND PAYORS TO RESOLVE THEIR DIFFERENCES. TO MANY TIMES PHYSICIANS ARE HELD AS A FINANCIAL HOSTAGE. THERE'S GOT TO BE A BETTER WAY.

RESOLUTION TO THIS MATTER WOULD BE APPRECIATED WITH SOMETHING THAT BOTH SIDES CAN LIVE WITH. BUT RIGHT NOW IT LOOKS LOPSIDED.

YOUR PASSAGE OF THIS BILL WITH AMENDMENTS WOULD BE APPRECIATED.

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



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

**Alison Powers**  
Executive Director

## TESTIMONY OF JANICE FUKUDA

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HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT  
Representative Mark M. Nakashima, Chair  
Representative Kyle T. Yamashita, Vice Chair

January 28, 2014

8:30 a.m.

### **HB 1960**

Chair Nakashima, Vice Chair Yamashita, and members of the Committee, my name is Janice Fukuda, Assistant Vice President, Workers' Compensation Claims at First Insurance, testifying on behalf of Hawaii Insurers Council. Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately one third of all property and casualty insurance premiums in the state.

HIC supports this bill. 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 40%. In addition, the bill does not allow reimbursement for prescription drugs not sold in a major retail pharmacy unless the Director approves it. We believe this provision will help curb costs in this area as well.

HB 1960 if enacted will allow a uniform way to reimburse prescription drugs and compound medications under the motor vehicle insurance law and workers' compensation law. We urge you to pass this bill.

Thank you for the opportunity to testify.





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

From: Mark Sektnan, Vice President

Re: **HB 1960 – Relating to Drug Pricing in Workers’ Compensation and Motor Vehicle Insurance Claims**  
**PCI Position: Support**

Date: Tuesday, January 28, 2014  
8:30 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 HB 1960 which addresses a major issue facing workers’ compensation insurers – the abusive pricing practices of some 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), HB 1960 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.

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

January 27, 2014

*Filed via electronic testimony submission system*

**RE: HB 1960, Workers' Compensation; Drug Pricing - 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 January 28, 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 HB 1960 as a reasonable and balanced pro-insurance consumer and pro-consumer protection legislative proposal. Specifically, NAMIC supports HB 1960, 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 (a cap of 140% of the average wholesale price set by the manufacturer), provides for the use of a reasonable and reliable objective pricing standard (Red Book: Pharmacy's Fundamental Reference as of the date of medication dispensing), and sets forth clear guidelines for how to address pricing caps for repackaged/re-labeled drugs (average wholesale price for the original manufacturer's national drug code number) and compound drugs (average wholesale price by gram weight of each underlying prescription drug contained in the compound medication).

HB 1960 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 HB 1960, 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](mailto: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



**Committee on Labor & Public Employment**

**Rep. Mark M. Nakashima, Chair**

**Rep. Kyle T. Yamashita, Vice Chair**

**Date: Tuesday, January 28, 2014**

**Time: 8:30 AM**

**Place: Conference Room 309**

**State Capitol**

**415 South Beretania Street**

**COMMENTS ON HOUSE BILL 1960**

Automated HealthCare Solutions (AHCS) submits the following testimony related to House Bill 1960 (HB 1960).

AHCS supports the intent of HB 1960 to prevent drug prices from becoming an unreasonable cost driver of health care in workers' compensation and motor vehicle claims but opposes specific provisions of the legislation which are detailed below.

HB 1960 provides:

Payment for all forms of prescription drugs including repackaged and relabeled drugs shall not exceed one hundred forty per cent of the average wholesale price set by the original manufacturer of the dispensed prescription drug as identified by its national drug code and as published in the Red Book: Pharmacy's Fundamental Reference as of the date of dispensing; provided that any prescription drug which is not available at a major retail pharmacy within the State shall not be reimbursable unless specifically approved by the director in accordance with section 91-3. For purposes of this section, "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.

Payment for compounded medications shall not exceed one hundred forty per cent of the average wholesale price by gram weight . . .

AHCS opposes the "shall not exceed" language used in the foregoing provisions which sets a reimbursement ceiling without defining a reimbursement floor. AHCS submits that this

language will only exacerbate the claim dispute process by not creating a definitive reimbursement rate. Accordingly, AHCS suggests that the language be amended so that reimbursement “shall be” one hundred forty per cent of the average wholesale price set by the original manufacturer, absent the parties directly contracting for a lower amount.

AHCS opposes the entire provision related to prescription drugs not available at a major retail pharmacy. AHCS finds this definition unworkable in practice and likely to lead to additional litigation as physicians battle with payors over whether certain dispensed medications can be deemed available at a “major retail pharmacy” or while pending approval by the director. HB 1960 was founded on the premise of eliminating the ambiguities that have plagued Hawaii’s workers’ compensation statutes and rules for years, yet the ambiguous language which references “major retail pharmacy” will actually result in a “step back” for the workers’ compensation system as endless time and resources will be wasted on interpreting an ambiguous phrase that bears no relevance in determining accurate reimbursement.

In addition, AHCS would recommend the adoption of Medi-Span Master Drug Database in lieu of the current medication pricing publication, Red Book. Medi-Span is considered a more widely used and comprehensive sourcebook and provides for easier integration into existing billing software. As a result, AHCS believes this is a more accurate and user-friendly pricing publication for all parties.

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, Esq.  
Government Relations Director  
Automated HealthCare Solutions, LLC

# DENNIS W. S. CHANG

Attorney at Law, A Limited Liability Law Corporation

WORKER'S RIGHTS - LABOR LAW  
WORKER'S COMPENSATION  
SOCIAL SECURITY DISABILITY  
LABOR UNION REPRESENTATION  
EMPLOYEES RETIREMENT SYSTEM  
BODILY INJURIES

January 27, 2014

To: COMMITTEE ON LABOR & PUBLIC EMPLOYMENT  
The Honorable Mark M. Nakashima, Chair  
The Honorable Kyle T. Yamashita, Vice Chair

Date: Tuesday, January 28, 2014  
Time: 8:30 AM  
Place: Conference Room 309, State Capitol

From: Dennis W. S. Chang, Labor and Workers' Compensation Attorney

## **Re: Strong Support for Passage of H.B. 1960 Relating to Workers' Compensation**

### **Discussion.**

Repackaging, including relabeling of a multitude of medications and compounding medications (generally referred to as repackaging or physician dispensing), has been a controversial issue in the State of Hawaii and the Legislature for a significant number of years. Clearly, as the various proposed bills stated, repackaging has been a major cost driver in the workers' compensation system. Everyone agrees that some action must be taken to plug a loophole in the statute to prevent repackaging as a major cost driver, which benefits only a select minority of physicians in the State. Hundreds of thousands of dollars have benefitted these physicians engaged in dispensing medications from their offices while the majority of physicians generally play by the traditional rules and customary practice of limiting repackaging only during the initial critical visit if they are engaged in this practice at all.

Stakeholders on both sides have focused their attention on the monetary aspects of repackaging. Physicians in favor of repackaging have argued that this is for the convenience of their patients and also necessary to supplement their income to keep their practices open. On the flip side, employers and insurance carriers have focused on the unfairness of the loophole in the statute, which has made it very costly for them. Many have argued over the years that the time has been ripe for the Legislature to intervene and reduce the profits of the physicians engaged in repackaging.

However, there is a whole human dimension left unaddressed. Repackaging can and has led to abusive practices for certain injured workers who have been dispensed medications that they do not want and/or do not need. There also

DILLINGHAM TRANSPORTATION BUILDING

735 BISHOP STREET ● SUITE 320 ● HONOLULU, HAWAII 96813 ● TELEPHONE: (808) 521-4005

apparently is a disproportionate amount of opioids and other addictive pain medications routinely dispensed through repackaging, too. With the passage of time, some patients take increasing amounts of strong opioid medications or at least they are being prescribed such medications in the repackaging process. Some patients eventually develop no incentive to return to work, which is directly inconsistent with one of the foremost underlying policies of the Worker's Compensation statute. Aside from receiving timely payments of wage loss, they should be receiving critical quality medical treatment following the work injury with the hopes that they will promptly return to work. If heavily medicated, there is less incentive to recover and return to work promptly.

There should be concern over whether injured workers involved in the repackaging process truly need all of the medications that are prescribed to them. In fights throughout the nation, questions have been raised over whether injured workers are getting disproportionately addicted to "pain killers." Questions have also been raised over whether they are really taking their medications as constantly prescribed through repackaging. Or, are the medications sold for profit and/or taken for fun? There have been documentaries showing that communities have been needlessly hurt because heavy opioids are so readily available through repackaging.

### **Suggestions**

I strongly support the passage of House Bill 1960 but urge the committee to consider additional amendments, which have been proposed in the past to curb the adverse financial costs to employers and insurance carriers. The committee should also consider

1. Inserting a limited period of time for repackaging, and thereafter requiring the refilling of medications through only pharmacies. This will clearly remove any conflict of interest for physicians engaged in repackaging, which is clearly driven by profit as well as the convenience of injured workers. However, there should be exceptions made for the rural parts of the neighbor islands and other similar considerations.

2. Restricting the dispensing of medications, the "pain killers" and other opioids, irrespective of whether there is a limited period for repackaging.

3. Defer decision-making until such time as definitions are presented to remove any ambiguities in the proposed bill.

The Legislature should be entertaining increasing the fees of physicians for their services to retain physicians in the workers' compensation system. This should be a better alternative than forcing physicians to adopt repackaging to augment their income to continue practicing in the onerous workers' compensation system.

DWSC:tc



**yamashita1**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, January 24, 2014 12:53 PM  
**To:** LABtestimony  
**Cc:** mendezj@hawaii.edu  
**Subject:** \*Submitted testimony for HB1960 on Jan 28, 2014 08:30AM\*

**HB1960**

Submitted on: 1/24/2014

Testimony for LAB on Jan 28, 2014 08:30AM in Conference Room 309

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Javier Mendez-Alvarez	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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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, January 28, 2014; 8:30 a.m.

**LATE**

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 1960  
RELATING TO DRUG PRICING IN WORKERS' COMPENSATION  
AND MOTOR VEHICLE INSURANCE CLAIMS**

The ILWU Local 142 supports the intent of H.B. 1960, which establishes price caps for the Hawaii workers' compensation and motor vehicle insurance charges for prescription drugs.

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 H.B. 1960 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.

H.B. 1960 also includes price caps for prescription drugs provided under motor vehicle insurance claims. We cannot comment on whether this is appropriate or not, but we hope the title of the bill will not jeopardize the intent of the bill to set caps to ensure that prescription drugs for injured workers is fairly priced.

Thank you for considering our comments.

yamashita1

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, January 28, 2014 7:37 AM  
**To:** LABtestimony  
**Cc:** jdefrancisco@IWPharmacy.com  
**Subject:** Submitted testimony for HB1960 on Jan 28, 2014 08:30AM

**LATE**

**HB1960**

Submitted on: 1/28/2014

Testimony for LAB on Jan 28, 2014 08:30AM in Conference Room 309

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jessica Defrancisco	IWP	Comments Only	No

Comments: Injured workers pharmacy would be happy to support this legislation given passage of the proposed amendment attached.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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Proposed language for HB 1960:



**Section (d), Paragraph 1 to be amended as follows:**

(d) Payment for all forms of prescription drugs including repackaged and relabeled drugs shall now exceed one hundred forty per cent of the average whole sale price set by the original manufacturer of the dispensed prescription drug as identified by its national drug code and as published in the Red Book: Pharmacy's Fundamental Reference as of the date of dispensing; provided that any prescription drug which is not available at a major retail pharmacy within the State shall ~~not be reimbursable unless specifically approved by the director in accordance with section 91-3~~ **at a lesser rate than the State's pharmacy fee schedule**. For purposed of this section, "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.

Notwithstanding Paragraph (d) of this subdivision, an employer or carrier shall be prohibited from refusing to allow a claimant to utilize a pharmacy of his or her choice to furnish the prescribed medications required by the claimant as long as such pharmacy's charges are below the pharmaceutical fee schedule adopted by the chair.