

# SB 2365 SD1

Measure Title: RELATING TO INSURANCE CLAIMS.

Report Title: Insurance Claims; Prescription Drugs; Workers' Compensation

Description: Limits the reimbursement payments of prescription medications, including relabeled or repackaged prescription medications, in workers' compensation claims. (SD1)

Companion:

Package: None

Current Referral: JDL, CPN

Introducer(s): HEE



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

830 PUNCHBOWL STREET, ROOM 321  
HONOLULU, HAWAII 96813

<http://labor.hawaii.gov>

February 20, 2014

To: The Honorable Rosalyn H. Baker, Chair,  
The Honorable Brian T. Taniguchi, Vice Chair, and  
Members of the Senate Committee on Commerce and Consumer Protection

Date: Thursday, February 20, 2014  
Time: 10:30 a.m.  
Place: Conference Room 229, State Capitol

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

**Re: S.B. No. 2365 SD1 Relating to Insurance Claims**

**I. OVERVIEW OF PROPOSED LEGISLATION**

The DLIR supports the intent of this proposal that seeks to control the prescriptive costs in the Hawaii workers' compensation system. The department respectfully requests an amendment to put the new language in a new section and offers other comments below for the Committee's consideration.

SB2365 SD1 proposes to amend Section 386-21, Hawaii Revised Statutes (HRS), by:

- Clarifying that payment for all forms of prescription drugs will be 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 Medi-Span Master Drug Database as of date of purchase, but permits contracts for a lower amount;
- 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;
- Allowing reimbursements for over the counter medications at 120% of the average wholesale price as set by the original manufacturer of the dispensed drug identified by its National Drug Code as published in Medi-Span Master Drug Database as of date of purchase, but permits contracts for a lower amount;

- Requires the use of generic pharmaceuticals unless the prescribing physician certifies that the injured employee's condition does not tolerate a generic pharmaceutical.

## **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**

This bill proposes that if a drug is not available at a major retail pharmacy within the State, "... the director may limit reimbursement of a specific prescription drug that is not available at a major retail pharmacy in the state." The DLIR believes this change in language was made in response to DLIR's concerns about rulemaking, however, the department believes that although the language has changed, it will still require the director to go through rulemaking in accordance with section 91-3.

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. In addition and until recently, there were approximately 2,400 billing disputes before the department pertaining to repackaged medications. DLIR believes that number may still be around 1,600. The unit in the Disability Compensation Division that contributes to the updating of the Medical Fee Schedule also is involved in the billing disputes before the department.

DLIR is unsure why a medication prescribed for workers' compensation would not be available at major retail pharmacy. The DLIR believes 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 and that this would certainly be time consuming and a costly burden on the department. Moreover, even if the department were to go through rulemaking with "batches" of such medications, it is unlikely that the rulemaking would be timely.

The DLIR firmly believes 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 in a manner identical to the HD1 of HB1960:

**"386- Prescription drugs; pharmaceuticals.**

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 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.

The DLIR 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

February 19, 2014

TESTIMONY TO THE  
SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

For Hearing on Thursday, February 20, 2014  
10:30 a.m., Conference Room 229

BY

BARBARA A. KRIEG  
DIRECTOR

**Senate Bill No. 2365, S.D. 1  
Relating to Insurance Claims**

**WRITTEN COMMENTS ONLY**

TO CHAIRPERSON ROSALYN BAKER AND MEMBERS OF THE COMMITTEE:

Thank you for the opportunity to provide testimony on S.B. No. 2365, S.D. 1.

The purpose of S.B. 2365, S.D. 1, is to limit the reimbursement payments of prescription medications, including relabeled or repackaged prescription medications, in workers' compensation claims.

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 but recommends several amendments to achieve its stated purpose.

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 be otherwise be billed using the original NDC and AWP.

However, DHRD suggests the following amendments to S.B. 2365, S.D. 1, to reasonably limit our reimbursements for prescription medications that ultimately impact our workers' compensation claims costs.

First, in proposed section (d) (first and third paragraphs), we strongly favor the original language in S.B. 2365, whereby the reimbursement price for repackaged, relabeled, and compound prescription drugs "shall not exceed" 140% of the original manufacturer's AWP, as opposed to "shall be" 140% in the current draft. The former language would make this provision consistent with the current WCMFS and allow providers the flexibility to bill carriers at less than the maximum reimbursement if they so choose.

Second, also in proposed section (d) (first paragraph), in lieu of the Director of Labor limiting reimbursement of a specific prescription drug, we recommend the bill state that "any prescription drug that is not available at any major retail pharmacy within the State shall not be reimbursed." This is largely consistent with the language suggested by the Director in his testimony before the Senate Committee on Judiciary and Labor but also adopts the "major retail pharmacy" definition in S.D. 1.

Third, proposed section (d) (second paragraph) is internally inconsistent as it makes reference to "reimbursement for over the counter medications" being paid at 120% of the AWP for the "dispensed prescription drug." (Emphases added.) We recommend this entire paragraph be deleted because it is unreasonable to mandate the 120% of AWP price where the over the counter medication could be purchased at a local pharmacy for much less.

We believe passage of this bill with the foregoing amendments 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.

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



# Chamber of Commerce HAWAII

*The Voice of Business*

**Testimony to the Senate Committee on Commerce and Consumer Protection  
Thursday, February 20, 2014 at 10:30 A.M.  
Conference Room 229, State Capitol**

**RE: SENATE BILL 2365, SD1 RELATING TO INSURANCE CLAIMS**

Chair Baker, Vice Chair Taniguchi, and Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") **strongly supports SB 2365, SD1 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, SD1 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. The Senate Draft 1 allows for reimbursement of over the counter drugs at 120% of the original price if dispensed by a physician.

We respectfully ask that the committee consider the following amendments:

1. Page 6, lines 14-16 on the Director's ability to limit reimbursement. We agree with the Department that although the statute is silent, rules must be promulgated which is time consuming and may impose some liability on the Department. We also agree with the Department that if a prescription drug is not available at a major retail pharmacy within the state, it should not be reimbursed. The amended language should





# Chamber of Commerce HAWAII

*The Voice of Business*

read as follows, "...provided that there shall be no reimbursement for any prescription drug that is not available at a major retail pharmacy within the State..."

2. Page 6, lines 20 – Page 7, lines 1-7. Over the counter drugs when prescribed by a physician reimburses at 120% of the original price. Delete this entire section as it is unnecessary. The purpose of this bill is to regulate prescription drugs. There is no compelling reason for a physician to start dispensing over the counter medications and no reason to pay more than the retail price. This adds unnecessary cost and does not provide any real service to the injured because these over the counter medications are readily accessible at many pharmacies.

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 MEDICAL ASSOCIATION

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

DATE: Thursday, February 20, 2014  
TIME: 10:30am  
PLACE: Conference Room 229

TO:

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Rosalyn H. Baker, Chair  
Senator Brian T. Taniguchi, 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, SD 1 RELATING TO INSURANCE CLAIMS

POSITION: Support with ammendments

**Current Language:** SB 2365 SD1 provides that the director may limit reimbursement of a specific prescription drug that is not available at a "**major retail pharmacy**" within the State. For these purposes, "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.

**Proposed Change:** Removal of entire "**major retail pharmacy**" provision.

**Reasons for Change:**

- ✓ As written, this definition is impractical and likely to lead to additional litigation as physicians battle with payers over whether certain dispensed medications are deemed available at a "major retail pharmacy."
- ✓ Further, the language does not elaborate **how** or **to what extent** the director may limit reimbursement and physicians should be able to know what to expect their reimbursements to be.

*Officers*

*President - Walton Shim, MD President-Elect – Robert Sloan  
Secretary - Thomas Kosasa, MD Immediate Past President – Stephen Kemble, MD  
Treasurer – Brandon Lee, MD Executive Director – Christopher Flanders, DO*

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**Current Language:** SB 2365 SD1 provides that “payment for all forms of prescription drugs including repackaged and relabeled drugs shall be 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 Medi-Span Master Drug Database as of *the date of purchase by the provider of service...*”

**Proposed Change:** Change AWP based on “*date of purchase by the provider of service*” to “*date of dispensing.*”

**Reasons for Change:**

- ✓ 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.

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



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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SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION  
Senator Rosalyn H. Baker, Chair  
Senator Brian Taniguchi, Vice Chair

Wednesday, February 20, 2014  
10:30 a.m.

### **SB 2365, SD1**

Chair Baker, Vice Chair Taniguchi, 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.

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 40%. In addition, the bill does not allow reimbursement for prescription drugs not sold in a major retail pharmacy unless the Director approves it. The Senate Draft 1 allows for reimbursement of over the counter drugs at 120% of the original price if dispensed by a physician.

We respectfully request the following amendments:

1. Page 6, line 6, 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+140% will result in across the board increases for both WC and Auto claims since many retail pharmacies currently charge less than AWP+40%.
2. Page 6, lines 14-16 on the Director's ability to limit reimbursement. We agree with the Department that although the statute is silent, rules must be promulgated which is time consuming and may impose some liability on the Department. We also agree with the Department that if a prescription drug is not available at a major retail pharmacy within the state, it should not be reimbursed. The amended language should read as follows,  
  
"... provided that there shall be no reimbursement for any prescription drug that is not available at a major retail pharmacy within the State. ..."
3. Page 6, lines 20 – Page 7, lines 1-7. Over the counter drugs when prescribed by a physician reimburses at 120% of the original price. Delete this entire section as unnecessary. The purpose of this bill is to regulate prescription drugs. There is no compelling reason for a physician to start dispensing over the counter medications and no reason to pay more than the retail price. This adds unnecessary cost and does not provide any real service to the injured because many pharmacies are readily accessible.

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



**To: Senator Rosalyn Baker, Chair  
Senator Brian Taniguchi, Vice Chair  
Members of the Committee on Commerce and Consumer Protection**

**Date: Thursday, February 20, 2014**

**Time: 10:30 am**

**Place: Conference Room 229**

**State Capitol**

**415 South Beretania Street**

### **COMMENTS ON SENATE BILL 2365 SD1**

Automated HealthCare Solutions (AHCS) submits the following testimony related to Senate Bill 2365 SD1:

AHCS supports the intent of SB 2365 SD1, 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 would actually negate the intent of the legislation, as is detailed further below.

AHCS opposes the language in SB 2365 SD1 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). 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.

AHCS also opposes the language in SB 2365 SD1 which provides that the director may limit reimbursement of a specific prescription drug that is not available at a “major retail

pharmacy” within the State. AHCS respectfully submits that this entire section is vague, unwarranted, serves no legitimate purpose and should be removed. As written, this provision is impractical and likely to lead to additional litigation as providers battle with payors over whether certain dispensed medications are deemed available at a “major retail pharmacy.” In addition, the current language does not elaborate how, or to what extent, the director may limit reimbursement.

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



TESTIMONY BEFORE THE SENATE COMMITTEE ON  
COMMERCE AND CONSUMER PROTECTION

Thursday, February 20, 2014  
10:30 a.m.

SB 2365, SD1  
RELATING TO INSURANCE CLAIMS

By Marleen Silva  
Director, Workers' Compensation  
Hawaiian Electric Company, Inc.

Chair Baker, Vice Chair Taniguchi, and Members of the Committee:

Hawaiian Electric Co. Inc., its subsidiaries, Maui Electric Company, LTD., and Hawaii Electric Light Company, Inc. **strongly support S.B. 2365, SD1.** Our companies represent over 2,000 employees throughout the State.

The purpose and intent of this bill is to limit the reimbursement payment of prescription medications, including relabeled or repackaged prescription drugs, and compound medications that had not been explicitly addressed in the current statute. Given this, prescription drug costs have quickly become one of the leading cost drivers in both workers' compensation and auto injury claims.

We believe this bill, as amended, will equitably balance the concerns of all stakeholders by establishing a reimbursement ceiling for repackaged, relabeled and compound drugs, and clarifying allowable dispensing practices in the workers' compensation and auto injury communities if enacted.

**For these reasons, we strongly support S.B. 2365, SD1 and respectfully urge you to pass this measure.**

Thank you for this opportunity to submit testimony.



To: The Honorable Rosalyn H. Baker, Chair  
The Honorable Brian T. Taniguchi, Vice Chair  
Senate Committee on Commerce and Consumer Protection

From: Mark Sektnan, Vice President

Re: **SB 2365 SD1 – Relating to Insurance Claims**  
**PCI Position: Support**

Date: Thursday, February 20, 2014  
10:30 a.m., Conference Room 229

Aloha Chair Baker, Vice Chair Taniguchi and Members of the Committee:

The Property Casualty Insurers Association of America (PCI) supports SB 2365 SD1 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 SD1 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.

# WIMAH

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

MAULI OLA  
THE POWER OF HEALING

FEBRUARY 20, 2014

COMMITTEE ON COMMERCE & CONSUMER PROTECTION

SENATE BILL 2365 SD1 RELATING TO INSURANCE CLAIMS

LIMITS THE REIMBURSEMENT PAYMENTS OF PRESCRIPTION MEDICATIONS, INCLUDING RELABELED OR REPACKAGED PRESCRIPTION MEDICATION, IN WORKERS' COMPENSATION CLAIMS. (SD1)

WORK INJURY MEDICAL ASSOCIATION OF HAWAII SUPPORTS THE INTENT OF SENATE BILL 2365 SD1. WE FEEL THERE ARE SOME ISSUES WITHIN THIS BILL THAT NEEDS TO BE RESOLVED.

WE DO NOT AGREE WITH PROPOSED LANGUAGE THAT THE DIRECTOR MAY LIMIT REIMBURSEMENT OF A SPECIFIC PRESCRIPTION DRUG THAT IS NOT AVAILABLE AT A "MAJOR RETAIL PHARMACY" WITHIN THE STATE. WE BELIEVE THIS SECTION IS FLAWED.

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 AND OTHERS WOULD BE APPRECIATED WITH SOMETHING THAT BOTH SIDES CAN LIVE WITH.

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