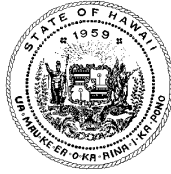


**SB2365**

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 1, 2014

**TESTIMONY TO THE  
SENATE COMMITTEE ON JUDICIARY AND LABOR**

For Hearing on Tuesday, February 4, 2014  
10:00 a.m., Conference Room 016

BY

BARBARA A. KRIEG  
DIRECTOR

**Senate Bill No. 2365**  
**Relating to Insurance Claims**

TO CHAIRPERSON CLAYTON HEE AND MEMBERS OF THE COMMITTEE:

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

The purpose of S.B. 2365 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.

DHRD **strongly supports** this bill.

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.

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

DEPARTMENT OF HUMAN RESOURCES  
**CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET, 10<sup>TH</sup> FLOOR • HONOLULU, HAWAII 96813  
TELEPHONE: (808) 768-8500 • FAX: (808) 768-5563 • INTERNET: [www.honolulu.gov/hr](http://www.honolulu.gov/hr)

KIRK CALDWELL  
MAYOR



CAROLEE C. KUBO  
DIRECTOR

NOEL T. ONO  
ASSISTANT DIRECTOR

January 31, 2014

The Honorable Clayton Hee, Chair  
and Members of the Committee on Judiciary and Labor  
State Senate  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Hee and Members of your Committee:

SUBJECT: Senate Bill No. 2365 Relating to Insurance Claims

The City and County of Honolulu supports passage of Senate Bill No. 2365, which amends Section 386-21, Hawaii Revised Statutes (HRS), by restricting markups of repackaged or relabeled prescription drugs and compound medications to what is currently authorized for retail pharmacies under State law. The Hawaii Workers' Compensation Medical Fee Schedule, Section 12-15-55, allows for prescription drugs to be reimbursed at the average wholesale price as listed in the American Druggist 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 Redbook followed by average wholesale price listed at time of purchase.

The City supports Senate Bill No. 2365, limiting excessive or unnecessary markups associated with repackaging or relabeling of prescription drugs and compound medications. We do not believe this bill negatively impacts Hawaii's injured workers as they will continue to receive, and the employer will continue to pay for, the necessary medical care, services and supplies as the nature of their injuries require. We believe this bill reasonably restricts the costs associated with repackaged or relabeled drugs and compound medications that are currently not regulated.

We urge your committee to pass Senate Bill No. 2365. Thank you for the opportunity to present testimony.

Sincerely,

A handwritten signature in black ink that reads "Carolee C. Kubo".

Carolee C. Kubo  
Director

## **TESTIMONY OF JANICE FUKUDA**

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SENATE COMMITTEE ON JUDICIARY AND LABOR

Senator Clayton Hee, Chair

Senator Maile Shimabukuro, Vice Chair

Tuesday, February 4, 2014

10:00 a.m.

### **SB 2365**

Chair Hee, Vice Chair Shimabukuro, 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.

SB 2365 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 Senator Clayton Hee, Chair  
The Honorable Senator Maile Shimabukuro, Vice Chair  
Senate Committee on Judiciary and Labor

From: Mark Sektnan, Vice President

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

Date: Tuesday, February 4, 2014  
10:00 a.m., Conference Room 016

Aloha Chair Hee, Vice Chair Shimabukuro and Members of the Committee:

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

**Testimony to the Senate Committee on Judiciary and Labor  
Tuesday, February 4, 2014 at 10:00 A.M.  
Conference Room 016, State Capitol**

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

Chair Hee, Vice Chair Shimabukuro, and Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") **strongly supports** SB 2365 Relating to 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.

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





- Government Employees Insurance Company
- GEICO General Insurance Company
- GEICO Indemnity Company
- GEICO Casualty Company

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TIMOTHY M. DAYTON, CPCU, GENERAL MANAGER

711 Kapiolani Blvd., Suite 300

■ Honolulu, HI 96813-5238

■ Email: [tdayton@geico.com](mailto:tdayton@geico.com)

Direct: (808) 593-1875

■ FAX (808) 593-1876

■ Cell: (808) 341-9252

**Senate Committee on Judiciary and Labor**  
Conference Room 016 State Capitol  
Tuesday, February 4, 2014, 10:00 a.m.  
**SB 2365 – Relating to Insurance Claims**

Chair Hee, Vice-Chair Shimabukuro and Members of the Senate Committee on  
Judiciary and Labor:

My name is Tim Dayton and I am General Manager for GEICO, Hawaii's  
largest insurer of motor vehicles. **GEICO supports SB 2365 which would help  
to control insurance costs by limiting charges for prescription drugs.**

Automobile Personal Injury Protection (PIP) Benefits follow the work comp fee  
schedule and so it appears that passage of this legislation would correct the  
problem in motor vehicle insurance as well.

Overprescribing of prescription drugs and drug price gouging has had a  
growing impact on the limited PIP benefits available to motorists. This results in  
Hawaii consumers exhausting their PIP coverage benefits on charges that are  
unnecessarily inflated or on repackaged drugs with even higher prices. This  
deprives consumers of the intended benefit of their coverage. Excessive charges  
will impact the cost of motor vehicle insurance in the future.

As currently written, Senate Bill 2365 aids in maintaining affordable premium levels by taking the excessive profit motive out of prescription dispensing by physicians and ensuring that charges for prescriptions are reasonable and motives for prescriptions are not financially based. This is not currently the case. I would like to cite dispensing of Speed Gel Rx as one specific example. As you can see from the attached, GEICO was billed \$832.02 for two tubes (30 ml e@) of this homeopathic spray. I purchased the same product in over the counter form for \$17.99 (50 ml). The only active ingredients found in the Rx version that were not in the over-the-counter version were ginger and Colchicinum. Colchicinum is indicated for patients who are suffering from gout which is unlikely to occur as a result of either a work or motor vehicle injury.

GEICO asks the Committee to consider noting the impact of this Bill for motor vehicle PIP benefits in the language or at least in the Committee Report to ensure that there is no ambiguity.

Thank you for the opportunity to submit this testimony.

A handwritten signature in black ink, appearing to read "Timothy M. Dayton", with a long horizontal flourish extending to the right.

Timothy M. Dayton, CPCU

1500

GEICO  
PO BOX 509119

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HEALTH INSURANCE CLAIM FORM

APPROVED BY NATIONAL UNIFORM CLAIM COMMITTEE 08/05

SAN DIEGO, CA 92150

<input type="checkbox"/> PICA <input type="checkbox"/> MEDICARE <input type="checkbox"/> MEDICAID <input type="checkbox"/> TRICARE <input type="checkbox"/> CHAMPVA <input type="checkbox"/> GROUP <input type="checkbox"/> FECA <input type="checkbox"/> OTHER										1a. INSURED'S I.D. NUMBER (For Program In Item 1)	
1. MEDICARE (Medicare #) <input type="checkbox"/> MEDICAID (Medicaid #) <input type="checkbox"/> TRICARE CHAMPUS (Sponsor's SSN) <input type="checkbox"/> CHAMPVA (Member ID#) <input type="checkbox"/> GROUP HEALTH PLAN (SSN or ID) <input type="checkbox"/> FECA (SSN) <input type="checkbox"/> LUNG (SSN) <input checked="" type="checkbox"/> OTHER (ID) <input type="checkbox"/>										1a. INSURED'S I.D. NUMBER (For Program In Item 1)	
2. PATIENT'S NAME (Last Name, First Name, Middle Initial) [REDACTED]					3. PATIENT'S BIRTH DATE [REDACTED]		SEX M <input type="checkbox"/> F <input checked="" type="checkbox"/>		1a. INSURED'S NAME (Last Name, First Name, Middle Initial) [REDACTED]		
5. PATIENT'S ADDRESS [REDACTED]					6. PATIENT RELATIONSHIP TO INSURED Self <input checked="" type="checkbox"/> Spouse <input type="checkbox"/> Child <input type="checkbox"/> Other <input type="checkbox"/>		7. INSURED'S ADDRESS (No., Street) [REDACTED]				
ZIP CODE 96797					STATE HI		CITY [REDACTED]		STATE [REDACTED]		
TELEPHONE (Include Area Code) (808) [REDACTED]					8. PATIENT STATUS Single <input type="checkbox"/> Married <input type="checkbox"/> Other <input checked="" type="checkbox"/>		ZIP CODE [REDACTED]		TELEPHONE (Include Area Code) ( ) [REDACTED]		
9. OTHER INSURED'S NAME (Last Name, First Name, Middle Initial) [REDACTED]					10. IS PATIENT'S CONDITION RELATED TO: a. EMPLOYMENT? (Current or Previous) YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		11. INSURED'S POLICY GROUP OR FECA NUMBER [REDACTED]				
a. OTHER INSURED'S POLICY OR GROUP NUMBER [REDACTED]					b. AUTO ACCIDENT? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> PLACE (State) HI		a. INSURED'S DATE OF BIRTH MM DD YY M <input type="checkbox"/> F <input type="checkbox"/>		b. EMPLOYER'S NAME OR SCHOOL NAME [REDACTED]		
b. OTHER INSURED'S DATE OF BIRTH MM DD YY M <input type="checkbox"/> F <input type="checkbox"/>					c. OTHER ACCIDENT? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		c. INSURANCE PLAN NAME OR PROGRAM NAME [REDACTED]				
c. EMPLOYER'S NAME OR SCHOOL NAME [REDACTED]					10d. RESERVED FOR LOCAL USE		d. IS THERE ANOTHER HEALTH BENEFIT PLAN? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> If yes, return to and complete Item 9 a-d.				
d. INSURANCE PLAN NAME OR PROGRAM NAME [REDACTED]					12. PATIENT'S OR AUTHORIZED PERSON'S SIGNATURE. I authorize the release of any medical or other information necessary to process this claim. I also request payment of government benefits either to myself or to the party who accepts assignment below. SIGNATURE ON FILE [REDACTED]		13. INSURED'S OR AUTHORIZED PERSON'S SIGNATURE I authorize payment of medical benefits to the undersigned physician or supplier for services described below. SIGNATURE ON FILE [REDACTED]				
14. DATE OF CURRENT ILLNESS (First symptom) OR INJURY (Accident) OR PREGNANCY (LMP) MM DD YY 2 17 2012					15. IF PATIENT HAS HAD SAME OR SIMILAR ILLNESS. GIVE FIRST DATE MM DD YY [REDACTED]		16. DATES PATIENT UNABLE TO WORK IN CURRENT OCCUPATION FROM MM DD YY TO MM DD YY [REDACTED]				
17. NAME OF REFERRING PROVIDER OR OTHER SOURCE [REDACTED]					17a. [REDACTED] 17b. NPI [REDACTED]		18. HOSPITALIZATION DATES RELATED TO CURRENT SERVICES FROM MM DD YY TO MM DD YY [REDACTED]				
19. RESERVED FOR LOCAL USE The electronic signature below constitutes certification that the charges submitted are in accordance with Hawaii Revised Statutes Chapter 431:10C and Hawaii Administrative Rules Chapter 16-23.					20. OUTSIDE LAB? YES <input type="checkbox"/> NO <input type="checkbox"/>		22. MEDICAID RESUBMISSION CODE [REDACTED] ORIGINAL REF. NO. [REDACTED]				
21. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY (Relate Items 1, 2, 3 or 4 to Item 24E by Line) 1. 847 0 Non-traumatic					23. PRIOR AUTHORIZATION NUMBER [REDACTED]		25. MEDICAID RESUBMISSION CODE [REDACTED] ORIGINAL REF. NO. [REDACTED]				
24. A. DATE(S) OF SERVICE From MM DD YY To MM DD YY 9 29 12 9 29 12 11		B. PLACE OF SERVICE [REDACTED]	C. EMG [REDACTED]	D. PROCEDURES, SERVICES, OR SUPPLIES (Explain Unusual Circumstances) CPT/ICPCS MODIFIER J8499 50436907201 (\$297.15)		E. DIAGNOSIS POINTER 1	F. \$ CHARGES 832	G. DAYS OR UNITS 02	H. SPENT Family Plan 60	I. ID. QUNL NPI [REDACTED]	J. RENDERING PROVIDER ID. # [REDACTED]
25. FEDERAL TAX ID. NUMBER [REDACTED]		SSN EIN [REDACTED]	26. PATIENT'S ACCOUNT NO. [REDACTED]		27. ACCEPT ASSIGNMENT? (For govt. claims, see back) YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	28. TOTAL CHARGE \$832	29. AMOUNT PAID \$0	30. BALANCE DUE \$832	33. BILLING PROVIDER INFO & PH # (888) 788-4771		
31. SIGNATURE OF PHYSICIAN OR SUPPLIER INCLUDING DEGREES OR CREDENTIALS (I certify that the above is on the reverse side and is a true and correct copy of the original.) [REDACTED]					32. SERVICE FACILITY LOCATION INFORMATION [REDACTED]		33. BILLING PROVIDER INFO & PH # [REDACTED]				
SIGNED [REDACTED]					DATE 9/29/2012		a. 1205973047	b. MD-10608			