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JADE T. BUTAY
DIRECTOR

WILLIAM G. KUNSTMAN
DEPUTY DIRECTOR

STATE OF HAWAII
KA MOKU'ĀINA O HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
KA 'OIHANA PONO LIMAHAHA

February 6, 2025

To: The Honorable Scot Z. Matayoshi, Chair, The
Honorable Cory M. Chun, Vice Chair, and
Members of the House Committee on Consumer Protection & Commerce

Date: Thursday, February 6, 2025
Time: 2:00 p.m.
Place: Conference Room 329, State Capitol

From: Jade T. Butay, Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. 205 HD1 RELATING TO WORKERS' COMPENSATION

I. OVERVIEW OF PROPOSED LEGISLATION

The **DLIR supports** this measure that amends Chapter 386, Hawaii Revised Statutes (HRS), by adding a new section that establishes a reimbursement rate shall not exceed cost plus forty per cent for non-prescription, over-the-counter, or non-legend drug payments that a provider of service deems necessary to treat a work injury.

II. CURRENT LAW

Workers' Compensation Medical Fee Schedule (WCMFS) Hawaii Administrative Rule (HAR), §12-15-55 Drugs, supplies, and materials states in part:

(a) charges for prescribed drugs, supplies, or materials for the use of the injured employee shall be separately listed and certified by the provider, or a duly authorized representative, that such charges for drugs, supplies or materials were required and prescribed for the industrial injury; and

(d) payment for supplies, which includes shipping charges, shall not exceed cost plus forty percent.

III. COMMENTS ON THE HOUSE BILL

The DLIR recognizes reimbursement of non-prescription drugs have been billed at inflated rates in excess of the standard cost-plus forty percent. This measure will codify portions of §12-15-55, HAR to regulate non-prescription, over the counter, or non-legend drugs at a reasonable cost.

TESTIMONY OF MILIA LEONG

COMMITTEE ON CONSUMER PROTECTION & COMMERCE
Representative Scot Z. Matayoshi, Chair
Representative Cory M. Chun, Vice Chair

Thursday, February 6, 2025
2:00 p.m.

HB 205, HD1

Chair Matayoshi, Vice Chair Chun, and members of the Committee on Consumer Protection & Commerce, my name is Milia Leong, Executive Claims Administrator for HEMIC Insurance Managers, Inc., and Workers' Compensation Chair for Hawaii Insurers Council. The 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 forty percent of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **opposes** this bill. Over the counter drugs in workers' compensation should not be dispensed by any physician. This bill would unnecessarily add costs to the system where over the counter drugs are readily available. If any physician feels the need to provide over the counter drugs to an injured worker, the reimbursement amount should be the average retail cost.

Thank you for the opportunity to testify.



Hawaii Medical Association

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HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
Representative Scot Z Matayoshi, Chair
Representative Cory M Chun, Vice Chair

Date: February 6, 2025
From: Hawaii Medical Association (HMA)
Jerald Garcia MD - Chair, HMA Public Policy Committee

**RE HB 205 HD 1 RELATING TO WORKERS' COMPENSATION- Workers'
Compensation; Nonprescription Drugs; Payment Limitation
Position: Support**

This measure would establish a payment rate not to exceed cost plus forty per cent for nonprescription drugs, over-the-counter drugs, or nonlegend drugs for workers' compensation purposes, subject to certain conditions.

Nonprescription drugs, over the counter drugs, or nonlegend drugs may be used routinely for patients during treatment of a work-related illness or injury, but the patient may not have direct insurance coverage for the cost of these nonprescription drugs and must pay out of pocket. While these patients' prescription medications are usually fully covered if deemed medically necessary for the work-related injury, the payer or more commonly the patients may pay exorbitant costs for these nonprescription medications that are indicated as part of their treatment plans.

HMA supports this measure that may provide cost containment for patients and payers, improving access to necessary medications for Hawaii patients with work related illness or injury.

Thank you for allowing the Hawaii Medical Association to testify in support of this measure.

2025 Hawaii Medical Association Officers

Elizabeth Ann Ignacio, MD, President • Nadine Tenn-Salle, MD, President Elect • Angela Pratt, MD, Immediate Past President
Jerris Hedges, MD, Treasurer • Thomas Kosasa, MD, Secretary • Marc Alexander, Executive Director

2025 Hawaii Medical Association Public Policy Coordination Team

Jerald Garcia, MD, Chair
Linda Rosehill, JD, Government Relations • Marc Alexander, Executive Director

REFERENCES AND QUICK LINKS

U.S. Bureau of Labor and Statistics. [Measuring Price Change in the CPI: Medical care. Nov 26 2024. Accessed February 4, 2025.](#)

U.S. Department of Labor. [Federal employees compensation program - Information for injured workers and their representatives.](#) Accessed February 4, 2025.

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To: Rep. Scot Z. Matayoshi, Chair
 Rep. Cory M. Chun, Vice Chair
 Members of the Committee on Consumer Protection & Commerce



Date: Thursday, February 6, 2025
 Time: 2:00 p.m.
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Support for SB 205 HD1

I strongly support SB 205 HD1, which establishes a maximum payment rate of cost plus forty per cent for nonprescription drugs, over-the-counter drugs, or nonlegend drugs for workers' compensation purposes, subject to certain conditions.

This bill is one of the three workers' comp bills that were originated by the 2024 Workers' Comp Working Group Chaired by Rep. Scot Matayoshi. The purpose of the bill is to establish a reasonable reimbursement rate for OTC drugs for injured workers, equivalent to the payment rate for supplies set forth in HAR 12-15-55(d), and comparable to the payment rate for prescription drugs (140% of Original Manufacturer's Average Wholesale Price) stated in HRS 386-21.7. Currently, because of the lack of regulatory guidance, OTC drugs are being billed at very inconsistent rates, resulting in confusion between medical providers and insurers alike, and leaving the door open for potential abuses. In some cases, OTC drugs are being billed as prescription drugs, resulting in outrageous pricing.

Under current law, equivalent generic drug products are supposed to be substituted for brand name pharmaceuticals unless the prescribing physician certifies that no substitution shall be prescribed because the injured employee's condition does not tolerate an equivalent generic drug product or if no generic equivalent is available. Unfortunately, certain providers are not substituting cheaper equivalent generic drug product, and in some cases, are prescribing OTC drugs that have been given a National Drug Code on Redbook. This is causing abuses in the worker comp system, leading to unnecessary costs to employers. Additionally, this practice disadvantages providers who do not participate in billing OTC medications as prescription drugs. I have many redacted examples to share, but as a summary:

Work Comp HCFA Bills for OTC products: OTC billing as a RX

Product Name	Active Ingredient	size	Manufacture	OTC beint billed as RX	Cost per PATCH
Trubexa Patch	Lidocaine 4.75%	32 per box	Strand	\$ 2,232.96	\$ 69.78
Lidothol Patch	Lidocaine 4%	15 per box	Terrain	\$ 1,199.30	\$ 79.95
Lenza Patch	Lidocaine 4%	15 per box	Sola	\$ 1,091.97	\$ 72.80
Lidopro Ointment	Lidocaine 4%	121g	Terrain	\$ 1,880.54	
Lidopro Patch	Lidocaine 4%	15 per box	Terrain	\$ 2,257.92	\$ 75.26
Diclona Gel	Lidocaine 4.5% + Diclofenac 1%	3.5oz	Terrain	\$ 1,691.68	

Available online: OTC No prescription needed

Product Name	Active Ingredient	size	Manufacture	OTC Online Price	Cost per PATCH
Lidocaine 4% Patch	Lidocaine 4%	20 per box	curist	\$ 18.00	\$ 0.90
Lidocaine 5% Cream	Lidocaine 5%	170g	curist	\$ 24.00	
Diclofenac Sodium 1% Gel	Diclofenac 1%	150g	curist	\$ 14.99	
Lidocaine Numbing Cream 5%	Lidocaine 5%	155g	Welmate	\$ 22.65	
Diclofenac Sodium 1% Gel	Diclofenac 1%	150g	Welmate	\$ 16.30	
Welmate Bundle	Lidocaine 5% + Diclofenac 1%	155g/150g	Welmate	\$ 39.90	
Numb520 Spray	Lidocaine 5%	72ml	Ebanel	\$ 19.99	
Salonpas Lidocaine Plus	Lidocaine 4%	7 per box	Hisamitsu	\$ 12.33	\$ 1.76

I would suggest, however, that this Committee consider amending proposed subsection (c) to clarify whether there is an obligation for the employer to reimburse providers for applicable Hawaii general excise tax.

For over three years, I have diligently been working to address this issue, engaging with various stakeholders to forge a consensus. It's worth noting that any opposition to this measure paradoxically aims to curtail the very abuses that this bill seeks to address. By passing this measure, you would enable stakeholders to continue their collaborative efforts towards an effective solution to this very real problem. I urge you not to let the pursuit of perfection impede the implementation of a good and necessary step forward.

Thank you for your consideration.

Cathy Wilson