



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

January 28, 2025

To: The Honorable Jackson D. Sayama, Chair,
The Honorable Mike Lee, Vice Chair, and
Members of the House Committee on Labor

Date: Tuesday, January 28, 2025
Time: 9:00 a.m.
Place: Conference Room 309, State Capitol

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

Re: H.B. 205 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 of 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 LABOR
Representative Jackson D. Sayama, Chair
Representative Mike Lee, Vice Chair

Tuesday, January 28, 2025
9:00 a.m.

HB 205

Chair Sayama, Vice Chair Lee, and members of the Committee on Labor, my name is Milia Leong, Executive Claims Administrator for HEMIC Insurance Managers, Inc. I am testifying today on behalf of 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.

To: Rep. Jackson D. Sayama, Chair
Rep. Mike Lee, Vice Chair
Members of the House Committee on Labor

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415 South Beretania Street

Support for HB 205

I strongly support the intent of HB 205, which establishes a payment rate of cost plus forty per cent for nonprescription drugs, over-the-counter drugs, or non-legend 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, leading to confusion between medical providers and insurers alike, and leaving the door open for potential abuses or nonpayment.

I have been working on this issue for over three years and have met with the various stakeholders in an attempt to achieve a consensus. While I understand that there are still potential problems or loopholes with HB 205 as originally drafted, I would respectfully ask that this Committee keep the bill alive for discussion purposes and perhaps add a defective effective date to ensure that discussion continues on this issue. This would allow the stakeholders to continue to collaborate towards an effective solution to this very real problem. Please do not allow perfection to be the enemy of the good.

Thank you for your consideration.

Cathy Wilson