

LEGAL AID
SOCIETY OF HAWAII

Telephone: (808) 536-4302 • Fax: (808) 527-8088
Mailing Address: P.O. Box 37375 • Honolulu, Hawaii 96837-0375
924 Bethel Street • Honolulu, Hawaii 96813

George J. Zweibel, Esq.
President, Board of Directors

Charles K. Greenfield, Esq.
Executive Director

TESTIMONY IN OPPOSITION TO SB3183
RELATING TO DRUG TESTING

February 2, 2008

The Legal Aid Society of Hawaii hereby provides testimony to the Committee on Human Services and Public Housing on SB3183 - Relating to Drug Testing, in opposition to the bill.

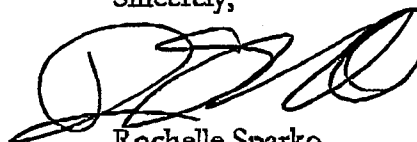
Founded in 1950, the Legal Aid Society of Hawaii is the oldest provider of legal services in the state. We provided civil legal assistance to those in need through nine offices located in Lihue, Waianae, Honolulu, Kaneohe, Kaunakakai, Lanai City, Wailuku, Kona and Hilo. Over the years we have provided leadership around public benefits issues and on an annual basis update our public benefits manual and provide a two day training on public benefits. Legal Aid actively participates in efforts to ensure low-barrier access to state-funded health insurance. Legal Aid has worked with Med-QUEST and community groups to maintain Med-QUEST coverage for recipients in the face of a new federal law requiring additional documentation. Legal Aid works with a number of health care professionals, providing training to public health nurses, social workers affiliated with hospitals and health care plans and psychiatry residents at Queens Medical Center.

SB3183 will require that those receiving health insurance from the state undergo random drug tests. Refusal to take the test is grounds for termination of medical coverage. Failing the test is grounds for referral to a drug or alcohol treatment program. Failure to participate in rehabilitation is grounds for termination of medical insurance.

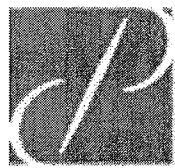
The sanction process authorized by SB3183 is somewhat shortsighted. It is unfunded, but implementing this bill will be costly. Subjecting Med-QUEST recipients to random drug testing is going to cost money. Also, there are not enough drug and alcohol treatment facilities available now; requiring everyone with a positive drug or alcohol test to participate in rehabilitation will require funding to create additional treatment facilities. If no funding is forthcoming (and it appears from the text of the bill that this is an unfunded mandate), people required to enter a treatment facility will lose their benefits if the facilities are full. Oftentimes, people with mental health issues self medicate by using drugs or alcohol. Termination of people with both mental health and addiction diagnoses will keep people from getting to their treating physicians and therapists as well as erecting barriers to medically necessary prescription medications.

For these reasons, we oppose SB3183. Thank you for this opportunity to testify.

Sincerely,



Rochelle Sparko
Staff Attorney
527-8006



the Drug Policy Forum

of hawai'i

February 2, 2008

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To: Senator Suzanne Chun Oakland, Chair
Senator Les Ihara, Vice Chair
And Members of the Committee on Human Services and Public Housing

From: Jeanne Ohta, Executive Director

RE: SB3183 Relating to Drug Testing
Hearing: Saturday, February 2, 2008, 1:15 p.m., Room 016

Position: Strong Opposition

Good afternoon Chair Chun Oakland, Vice Chair Ihara and members of the Committee on Human Services and Public Housing. I am testifying today in strong opposition to SB 3183 which would require recipients of Med-Quest benefits to submit to random drug testing.

If the goal of this proposal is to reduce drug use among Med-Quest recipients, it will not. Random drug testing is an expensive policy that has been proven ineffective in reducing the use of drugs. Random drug testing is a waste of taxpayer money.

The money would be better spent on increasing drug treatment programs in Hawaii; so that we have treatment on demand. People are being turned away from programs because of the lack of treatment beds and space in outpatient programs.

Making people ineligible for med-quest will not solve problems and in fact may create more expensive health issues that in the end, taxpayers will still become liable for. People with substance use problems should have access to medical care as physicians can often help convince their patients that they need treatment.

This proposal is bad public policy and is not in the best interest of our state. Please hold this bill.

P.O. Box 61233
Honolulu, HI 96839

Phone: (808)-988-4386
Fax: (808) 373-7064

Email: info@dpfhi.org
Website: www.dpfhi.org

SB3183, Relating to Drug Testing

HSPH, Chair, Sen Chun-Oakland

2/2/08 1:15

PLEASE KILL THIS BILL!

This bill is just another way of continuing to oppress the most vulnerable populations in the state, our poor and sometimes homeless neighbors. To pass this bill would be akin to declaring war on the poor, so strange is its motivation. This bill was born out of the paranoid hysteria about drugs, and has no place in a humane, caring approach to trying to help the most needy of our neighbors.

Thank you.

Aloha, joel

Dr. Joel Fischer, ACSW
President, 19-3, Democratic Party

Professor
University of Hawai'i, School of Social Work Henke Hall Honolulu, HI 96822

"It is reasonable that everyone who asks justice should DO justice."
Thomas Jefferson

"There comes a time when one must take a position that is neither safe, nor politic, nor popular, but one must take it because one's conscience tells one that it is right."

Dr. Martin Luther King, Jr.

"Never, never, never quit."
Winston Churchill

SENATE
SERGEANT-AT-ARMS
THE SENATE

'08 JAN 31 A9:48

RECEIVED

Re: SB 3183
SB 3184

Hearing by Human Services and Public Housing Committee, February 2nd,
1:15 p.m., Conference Room 016.

To Committee Chairs and Members:

I urge support for these bills. I would like to know my tax dollars are going for food and health care for the truly needy and those who are really trying to help themselves get out of a cycle of poverty. While I sincerely understand the need to assist those who are dependent on drugs, I would like to see help addressed to that particular problem and not have general assistance given that might only provide more opportunity or resources to acquire drugs.

Thank you,

Shirley Hasenyager
235 Kuuhoa Place
Kailua HI 96734-2734
262-5069
shirleyinhi@aol.com



**TESTIMONY OF THE STATE ATTORNEY GENERAL
TWENTY-FOURTH LEGISLATURE, 2008**

ON THE FOLLOWING MEASURE:

S.B. NO. 3183, RELATING TO DRUG TESTING.

BEFORE THE:

SENATE COMMITTEE ON HUMAN SERVICES AND PUBLIC HOUSING

DATE: Saturday, February 2, 2008 **TIME:** 1:15 PM

LOCATION: State Capitol, Room 016
Deliver to: Committee Clerk, Room 226, 1 copies

TESTIFIER(S): Mark J. Bennett, Attorney General
or Cori K. Woo, Deputy Attorney General.

Chair Chun Oakland and Members of the Committee:

The Attorney General has serious concerns regarding this bill, as it appears to be unconstitutional.

This bill requires recipients of benefits administered by the Department of Human Services Med-QUEST division to submit to random drug testing.

The Attorney General believes that this bill presents significant constitutional concerns under the searches and seizures provisions of the Fourth Amendment. If the bill is amended as explained below, these concerns may be lessened. Given the complexity of Fourth Amendment law and its application in the context of public benefits, however, any attempt to require Medicaid recipients to submit to random drug testing raises the possibility of a court challenge.

The fact that a Medicaid recipient may choose to decline benefits rather than agree to random drug testing does not necessarily end the constitutional inquiry. Under the doctrine of "unconstitutional conditions," once the government elects to provide benefits, in many situations the conditions placed on those benefits must also comply with the constitution. *United States v. Scott*, 450 F.3d 863, 866 (9th Cir. 2005), discussing *Dolan v. City of Tigard*, 512 U.S. 374 (1994).

In order to comply with the Fourth Amendment, random or "suspicionless" searches, such as the drug tests proposed here,

generally must be justified by the government's "special needs, beyond the normal need for law enforcement[.]" Scott, 450 F.3d at 868. Those non-law enforcement "special needs" include, for example, verifying eligibility for welfare programs, Sanchez v. County of San Diego, 464 F.3d 916 (9th Cir. 2006), and protecting children from the dangers of drug abuse and trafficking, Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646 (1995).

It is an open question whether a random drug testing requirement for Medicaid recipients is constitutional. To lessen the constitutional concerns, the bill may be amended by doing the following:

1. Clearly articulating, in a purpose section, the special needs (beyond law enforcement) that this proposal seeks to address. These interests must be concrete, and closely related to the harms the bill seeks to address. Hypothetical concerns may be insufficient. Scott, 450 F.3d at 870.

2. Supporting the bill with concrete information and evidence demonstrating a marked and documented problem of drug abuse among Medicaid recipients, over and above the same problem among the general population.

3. Not using the program for law enforcement purposes. This should be explained both in the statutory terms and as implemented by the Department. For example, if the major goal of the provision is to enable prosecutions for drug crimes, the special needs requirement will not be met.

4. Making a drug-free life an explicit condition of eligibility for the benefits. The measure proposed here makes random drug testing a requirement "in order to retain eligibility" for the benefits program. Neither the Hawaii Revised Statutes nor the Hawaii administrative rules require a recipient to lead a drug-free life. If statutes or the rules were amended to make living a drug-free lifestyle a condition of eligibility, the measure's position in a constitutional challenge may be improved. That is because the Supreme Court and the

Ninth Circuit have upheld the constitutionality of state laws requiring home visits for welfare applicants, in part because the visits help to assure that the recipients meet eligibility requirements. *Wyman v. James*, 400 U.S. 309 (1971); *Sanchez v. City of San Diego*, 464 F.3d 916 (9th Cir. 2006).

5. Including statutory wording requiring the Department, in adopting rules, to use the least intrusive means in all aspects of the drug testing program. This should include maximizing individuals' privacy in collecting urine samples, and restricting the use of the information obtained.

As noted above, the constitutionality of this proposal is an open question. Amending the bill as suggested above should lessen the constitutional concerns posed here. Given the complexity of this area of law, however, a court challenge is likely even if the bill is amended as suggested.

Thank you for this opportunity to testify.

LINDA LINGLE
GOVERNOR



LILLIAN B. KOLLER, ESQ.
DIRECTOR

HENRY OLIVA
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809-0339

February 2, 2008

MEMORANDUM

TO: The Honorable Suzanne Chun Oakland, Chair
Senate Committee on Human Services and Public Housing

FROM: Lillian B. Koller, Director

SUBJECT: **S.B. 3183 – RELATING TO DRUG TESTING**

Hearing: Saturday, February 2, 2008, 1:15 pm
Conference Room 016 State Capitol

PURPOSE: The purpose of S.B. 3183 is to require recipients of medical assistance to submit to random drug testing as a condition of eligibility.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) cannot support this bill as written, as it would adversely impact the priorities set forth in the Executive Supplemental Budget because it is problematic in two key areas.

First, implementing this additional eligibility requirement would first require the approval from the Federal Centers for Medicare and Medicaid Services (CMS) through a State Plan Amendment (SPA). Until Federal approval is received, the Department would be unable to access Federal funding so this bill would require complete dependence on State funds.

Secondly, Federal Medicaid funding is available only for services that are medically necessary. Currently, access to substance abuse services is available only to individuals with a medical diagnosis of substance abuse. The Department is concerned that the totality of the population addressed in this bill, which also includes all children, will not meet the Medicaid criteria for medical necessity in order to claim Federal funds, thus increasing the State's funding responsibility.

We defer to the Department of the Attorney General as to the legality of this proposed bill.

Thank you for the opportunity to provide comments on this bill.