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March 25, 2009

<u>MEMORANDUM</u>

TO: Honorable Marcus. R. Oshiro, Chair
            House Committee on Finance

FROM: Lillian B. Koller, Director

SUBJECT: **S. B. 917, S.D. 2 – RELATING TO THIRD PARTY LIABILITY FOR**
            MEDICAID

            Hearing: Wednesday, March 25, 2009 2:00 p.m.
                        Room 308 State Capitol

<u>PURPOSE:</u> The purpose of this bill is to ensure State compliance with Federal law that

requires the strengthening of the State's ability to identify and obtain payments from

third party resources that are legally responsible to pay claims primary to Medicaid.

<u>DEPARTMENT'S POSITION:</u> The Department of Human Services (DHS) strongly

supports this Administration-sponsored bill.

Medicaid is designed to be the provider of last resort. However, there are some

statutory loopholes through which third parties have been able to avoid paying before

Medicaid. Federal law requires health insurers, and other third parties legally liable to

pay for health care services received by Medicaid recipients, to pay for such services

primary to Medicaid. However, Medicaid agencies often pay claims for which a third

party may be liable because they lack information about the existence of the other health coverage.

This proposal with ensure State compliance to the P.L. 109-171, the federal Deficit Reduction Act of 2005 (DRA), section 6035, that requires the strengthening of the State's ability to identify and obtain payments from third party resources that are legally responsible to pay claims primary to Medicaid.

Under Federal Medicaid law, the State is required to take reasonable measures to determine the legal liability of the third parties who are liable to pay for services under the State Medicaid Plan. At a minimum, such measures must include the requirements specified in 42 CFR sec. 433.138(b)-(k). Also, Section 6035 of the DRA imposed additional requirements (42 USC sec. 1396a(a)(25)), which must be codified in State law. The State may not be eligible for federal financial participation (FFP, also referred to as federal matching funds) if the State fails to fulfill the requirements of 42 CFR sections 433.138 and 433.129. Therefore, the State's eligibility for FFP is at risk if it fails to adopt the state laws required by section 6035 of the DRA.

We understand that S.B. 917 has been revised to accommodate previous testimony, but the language is now inconsistent with the DRA. We strongly support the amendments recommended by the Office of the Attorney General that incorporate the concerns expressed by a previous testifier and are consistent with the DRA requirements.

This bill clarifies the numerous types of health insurers, managed care organizations, pharmacy benefit managers, and others that are legally responsible to make payments

before Medicaid does. It also clarifies their requirements to 1) provide the State requested information on the third party coverage, 2) accept the State's right of recovery and the assignment to the State of any right of an entity to payments, 3) respond to any State inquiry regarding a claim for payment that is submitted not later than three years after the date of service, and 4) agree not to deny a State claim submitted under certain situations.

Currently, approximately $4.8 million is recovered annually from third party liability payments, probate and cost avoidance activities. This bill will enhance these recovery efforts to increase the amount of third party recoveries, therefore, reducing the unnecessary payment in State and Federal expenditures for Medicaid recipients, and it will make the State in compliance with Federal law to avoid penalties.

As required under the Federal Deficit Reduction Act (DRA), the statutory strengthening proposed in this bill will enhance DHS efforts to successfully obtain third party payments for Medicaid recipients thus reducing unnecessary State expenditures.

Thank you for this opportunity to testify.