



**TESTIMONY OF THE STATE ATTORNEY GENERAL  
TWENTY-FIFTH LEGISLATURE, 2009**

**LATE**

**ON THE FOLLOWING MEASURE:**

S.B. NO. 917, S.D. 2, RELATING TO THIRD PARTY LIABILITY FOR MEDICAID.

**BEFORE THE:**

HOUSE COMMITTEE ON FINANCE

**DATE:** Wednesday, March 25, 2009 **TIME:** 2:00 PM

**LOCATION:** State Capitol, Room 308

**TESTIFIER(S):** Mark J. Bennett, Attorney General,  
or Ryan S. Endo, Deputy Attorney General

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Dear Chair Oshiro and Members of the Committee:

The Department of the Attorney General supports this bill.

This measure amends chapter 431L, Hawaii Revised Statutes, to comply with section 6035 of the Deficit Reduction Act of 2005 (P.L. No. 109-171) ("the DRA"). The DRA made amendments to section 1902 of the Social Security Act that are designed to strengthen the State's ability to identify and obtain payments from third parties that are legally liable to pay for health care services provided to recipients of medical assistance.

We suggest the following technical amendments to the bill.

In section 2, paragraph (3), on page 2, lines 15-17, the phrase "or the date the State knew of the health care item or service, whichever is longer," causes a conflict with paragraph (4)(A), which only refers to the date of service. Since the phrase is not required by the DRA, the phrase may be deleted from paragraph (3). Alternatively, the phrase may be added to the end of paragraph (4)(A) at page 3, line 3, for consistency.

Section 6035 of the DRA specifically refers to "health care item or service"; therefore, we recommend that the phrase "an item" at page 2, line 8, should be changed to read "a health care item," and change

the phrase "the item" at page 3, line 3, to read "the health care item" for consistency with the terminology contained in the federal statute.

In section 3, the following additional amendments should be made to the first sentence of section 431L-1 to reflect the wording contained in amended section 1902(a)(25)(G) of the Social Security Act: "Any health insurer (including a self-insured plan, a group health plan[7] as defined in section 607(1) of the Employee Retirement Income Security Act of 1974 . . . ."

In section 4, we believe that it is unnecessary to define "first party." We believe that the term "third party" in the DRA refers to any other liable payor other than the State's medical assistance program. Accordingly, we recommend deleting the proposed definition of "first party," and suggest the following amendments to section 431L-2, which we believe address the concerns raised with respect to the terms "first party" and "third party":

**[+]§431L-2[+] State's right to third party payments.** To the extent that payment has been made under the state plan for medical assistance for health care items or services furnished to an individual in any case where [~~a third~~] another party has a legal liability to make payment for such assistance, [~~the State has in effect laws under which, to the extent that payment has been made under the state plan for medical assistance for health care items or services furnished to an individual,~~] the State is considered to have acquired the rights of [~~such~~] the individual to payment by [~~any~~] the other party for [~~such~~] those health care items or services.

We respectfully request that the Committee pass this bill with the requested amendments.