

Honolulu, Hawaii

FEB 18 2009

RE: S.B. No. 917

S.D. 1

Honorable Colleen Hanabusa  
President of the Senate  
Twenty-Fifth State Legislature  
Regular Session of 2009  
State of Hawaii

Madam:

Your Committees on Human Services and Health, to which was referred S.B. No. 917 entitled:

"A BILL FOR AN ACT RELATING TO THIRD PARTY LIABILITY FOR  
MEDICAID,"

beg leave to report as follows:

The purpose of this measure is to ensure state compliance with section 6035 of the Deficit Reduction Act of 2005 (P.L. 109-171), by strengthening the State's ability to identify and obtain payments from third party payers that are legally responsible to pay for health care services received by Medicaid recipients to pay primary to Medicaid.

Testimony in support of this measure was received by the Department of Human Services. The Hawaii Association for Justice submitted testimony in opposition to the measure. Copies of written testimony are available for review on the Legislature's website.

Your Committees find that Medicaid is designed to be a payer of last resort. However, statutory loopholes allow some third party payers to avoid paying primary to Medicaid. This measure is designed to enhance the Department of Human Services' ability to identify third party payers that are legally responsible to pay for health care services received by Medicaid recipients and obtain payments from such third party payers when appropriate. In so doing, the measure will reduce unnecessary expenditures of state and federal Medicaid funds.



Your Committees have amended this measure as follows:

- (1) Replacing the definition of "third party" with a definition for "first party" in order to substitute the correct term of art, thus clarifying the intent of the measure and avoiding unintended ambiguity; and
- (2) Making technical, nonsubstantive amendments for purposes of clarity, consistency, and style.

As affirmed by the records of votes of the members of your Committees on Human Services and Health that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 917, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 917, S.D. 1, and be referred to the Committee on Commerce and Consumer Protection.

Respectfully submitted on  
behalf of the members of the  
Committees on Human Services  
and Health,

  
\_\_\_\_\_  
DAVID Y. IGE, Chair

  
\_\_\_\_\_  
SUZANNE CHUN OAKLAND, Chair



The Senate  
Twenty-Fifth Legislature  
State of Hawaii

**Record of Votes**  
**Committee on Human Services**  
**HMS**

Bill / Resolution No.:* <i>SB 917</i>	Committee Referral: <i>HMS/HTH.CPM</i>	Date: <i>2/10/09</i>		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
CHUN OAKLAND, Suzanne (C)	✓			
IHARA, Jr., Les (VC)	✓			
GREEN, M.D., Josh				✓
HEMMINGS, Fred	✓			
<b>TOTAL</b>	<i>3</i>	<i>0</i>	<i>0</i>	<i>1</i>
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: <i>[Signature]</i>				
<b>Distribution:</b> Original    Yellow    Pink    Goldenrod File with Committee Report    Clerk's Office    Drafting Agency    Committee File Copy				

\*Only one measure per Record of Votes

The Senate  
 Twenty-Fifth Legislature  
 State of Hawaii

**Record of Votes**  
**Committee on Health**  
**HTH**

Bill / Resolution No.:* <b>SB 917</b>	Committee Referral: <b>HMS/HTH, CPN</b>	Date: <b>2/10/2009</b>		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
IGE, David Y. (C)	✓			
GREEN, M.D., Josh (VC)				✓
BAKER, Rosalyn H.	✓			
ESPERO, Will	✓			
NISHIHARA, Clarence K.				✓
HEMMINGS, Fred	✓			
<b>TOTAL</b>	<b>4</b>			<b>2</b>
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: <div style="text-align:center;"><i>David Y. Ige</i></div>				
<b>Distribution:</b> Original     Yellow     Pink     Goldenrod File with Committee Report     Clerk's Office     Drafting Agency     Committee File Copy				

\*Only one measure per Record of Votes

**Report Title:**

Third Party Liability for Medicaid

**Description:**

Ensures state compliance with the Deficit Reduction Act of 2005 (P.L. 109-171) by strengthening the State's ability to identify and obtain payments from first or third party payers that are legally responsible to pay for health care services received by medicaid recipients primary to medicaid. (SD1)

---

---

# A BILL FOR AN ACT

RELATING TO THIRD PARTY LIABILITY FOR MEDICAID.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. When Congress passed the Deficit Reduction Act  
2 of 2005, P.L. 109-171, it made a number of amendments to section  
3 1902 of the Social Security Act intended to strengthen states'  
4 ability to identify and collect from liable third party payers.

5           The purpose of this Act is to make necessary amendments to  
6 state laws to comply with the federal amendments.

7           SECTION 2. Chapter 431L, Hawaii Revised Statutes, is  
8 amended by adding a new section to be appropriately designated  
9 and to read as follows:

10           "§431L-    Insurer requirements. Any health insurer as  
11 identified in section 431L-1 shall:

12           (1) Provide, with respect to individuals who are eligible  
13           for, or are provided, medical assistance under title  
14           42 U.S.C. section 1396a (section 1902 of the Social  
15           Security Act), as amended, upon the request of the  
16           State, information to determine during what period the  
17           individual or the individual's spouse or dependents

1 may be or may have been covered by a health insurer  
2 and the nature of the coverage that is or was provided  
3 by the health insurer, including the name, address,  
4 and identifying number of the plan in a manner  
5 prescribed by the State;

6 (2) Accept the State's right of recovery and the  
7 assignment to the State of any right of an individual  
8 or other entity to payment from the party for an item  
9 or service for which payment has been made for medical  
10 assistance under title 42 U.S.C. section 1396a  
11 (Section 1902 of the Social Security Act);

12 (3) Respond to any inquiry by the State regarding a claim  
13 for payment for any health care item or service that  
14 is submitted not later than three years after the date  
15 of the provision of the health care item or service or  
16 the date the State knew of the health care item or  
17 service, whichever is longer; and

18 (4) Agree not to deny a claim submitted by the State  
19 solely on the basis of the date of submission of the  
20 claim, the type or format of the claim form, or a  
21 failure to present proper documentation at the point-  
22 of-sale that is the basis of the claim, if:

1           (A) The claim is submitted by the State within the  
 2           three-year period beginning on the date on which  
 3           the item or service was furnished or the date the  
 4           State knew of the health care item or service  
 5           that was furnished, whichever is longer; and

6           (B) Any action by the State to enforce its rights  
 7           with respect to the claim is commenced within six  
 8           years of the State's submission of the claim."

9           SECTION 3. Section 346-1, Hawaii Revised Statutes, is  
 10 amended by adding a new definition to be appropriately inserted  
 11 and to read as follows:

12           "First Party" includes health insurers, self-insured  
 13 plans, group plans, service benefit plans, managed care  
 14 organizations, health maintenance organizations, pharmacy  
 15 benefit managers, or other parties that are by statute,  
 16 contract, or agreement, legally responsible for payment of a  
 17 claim for a health care item or service."

18           SECTION 4. Section 431L-1, Hawaii Revised Statutes, is  
 19 amended to read as follows:

20           "**[+]§431L-1[+]** **Insurers prohibited from taking medicaid**  
 21 **status into account.** Any health insurer (including a group  
 22 health plan, as defined in section 607(1) of the Employee



1 Retirement Income Security Act of 1974, a self-insured plan, a  
2 health service benefit plan, a mutual benefit society, a  
3 fraternal benefit society [~~and~~], a health maintenance  
4 organization[~~}]~~, a managed care organization, a pharmacy benefit  
5 manager, or other party that is, by statute, contract, or  
6 agreement, legally responsible for payment of a claim for a  
7 health care item or service) is prohibited, in enrolling an  
8 individual or in making any payments for benefits to the  
9 individual or on the individual's behalf, from taking into  
10 account that the individual is eligible for or is provided  
11 medical assistance under 42 U.S.C. section 1396a (Section 1902  
12 of the Social Security Act) herein referred to as medicaid, for  
13 this State, or any other state."

14 SECTION 5. Section 431L-2, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 "~~[§]431L-2[§]~~ **State's right to third party or first party**  
17 **payments.** To the extent that payment has been made under the  
18 state plan for medical assistance in any case where a third  
19 party or first party has a legal liability to make payment for  
20 such assistance, the State has in effect laws under which, to  
21 the extent that payment has been made under the state plan for  
22 medical assistance for health care items or services furnished

1 to an individual, the State is considered to have acquired the  
2 rights of such individual to payment by any other party for such  
3 health care items or services."

4 SECTION 6. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 7. This Act shall take effect upon its approval.

# HMSA



An Independent Licensee of the Blue Cross and Blue Shield Association

March 3, 2009

The Honorable Rosalyn Baker, Chair  
The Honorable David Ige, Vice Chair

Senate Committee on Commerce and Consumer Protection

**Re: SB 917 SD1 – Relating to Third Party Liability for Medicaid**

Dear Chair Baker, Vice Chair Ige and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on SB 917 SD1. HMSA takes no position on the intent of this measure.

According to the justification sheet attached to this administrative bill, the purpose of SB 917 SD1 is to bring state statute in line with federal statutes relating to third party liability for Medicaid claims. The language in this measure actually goes beyond the timeframes for recovery outlined in federal statute. In order to bring state and federal statute completely in line we would respectfully request the removal of the language on page 3, lines 3-5 which reads:

or the date the State knew of the health care item or service that was furnished, whichever is longer

The removal of this language would ensure that state and federal law are operating in concert. Thank you for the opportunity to testify today.

Sincerely,

A handwritten signature in black ink, appearing to read "JD", with a long horizontal flourish extending to the right.

Jennifer Diesman  
Assistant Vice President  
Government Relations