

**SB 917**



STATE OF HAWAII  
DEPARTMENT OF HUMAN SERVICES  
Med-QUEST Division-Finance Office  
1001 Kamokila Boulevard, Suite 317  
Kapolei, Hawaii 96707

February 10, 2009

MEMORANDUM

TO: Honorable Suzanne Chun Oakland, Chair  
Senate Committee on Human Services

Honorable David Y. Ige, Chair  
Senate Committee on Health

FROM: Lillian B. Koller, Director

SUBJECT: **S. B. 917 – RELATING TO THIRD PARTY LIABILITY FOR  
MEDICAID**  
Hearing: Tuesday, February 10, 2009 1:15 pm  
Conference Room 016, State Capitol

PURPOSE: 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.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) strongly supports this Administration 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. This bill amends the current statutes and will enhance the DHS efforts to successfully obtain third party payments for Medicaid recipients thus reducing unnecessary State expenditures.

This bill clarifies the definition of “third party” to list the numerous types of health insurers, managed care organizations, pharmacy benefit managers, etc. that are legally responsible to make payments primary to Medicaid coverage.

It also clarifies the third party insurer 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.

Thank you for this opportunity to testify.

**Testimony of Robert Toyofuku**  
**On behalf of Hawaii Association for Justice**  
**In OPPOSITION to**  
**S.B. No. 917**

My name is Robert Toyofuku. I am testifying on behalf of the Hawaii Association for Justice (formerly known as CLH\*) in Opposition to S.B. No. 917.

The Hawaii Association for Justice opposes S.B. No. 917 for technical reasons and offers non-substantive amendments to effectuate the bill's purpose and avoid unintended ambiguity.

Included in this measure are proposed definitions relating to "third party" and "third person" in connection with the State's recovery of medical expenses from "first party" health, medical or accident insurance. The terms "third party," "third person" and "first party" are terms of art with specific meanings within the insurance and tort fields. The health or medical insurance coverage that this measure applies to, such as HMSA, Kaiser or union benefit plans are "first party" coverages where the persons covered are the insured parties to the contract. Insureds under liability insurance policies, on the other hand, buy the insurance to cover injury to others, i.e., "third parties" who are not parties to the insurance contract. This bill inadvertently refers to "first party" coverages as "third party" coverages.

The following amendments are suggested to correctly identify the coverages in order to avoid unintended ambiguity or errors.

1. Section 3, p3, line 13: Delete: "'Third party' also means." Replace with: "'First Party' includes."
2. Section 5, p.4, line 17: Add: "and first party" after "third party."
3. Section 5, p.4, line 19: Add: "and first party" after "third party."
4. Section 5, p.5, lines 5 – 6: Delete subsection (b)

The proposed amendments makes clear that "first party" health and medical benefits as well as "third party" coverages are both included in the State's right to recovery under §431L-2. This makes the proposed subsection (b) unnecessary and avoids confusion or ambiguity with its reference to §346-37 which has nothing to do with the subject of this bill (§431L-2).

Thank you for this opportunity to testify in Opposition to S.B. No. 917.

\* CLH has changed its name to conform to the name of its national organization the American Association for Justice.