



GOV. MSG. NO. 697

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 7, 2010

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fifth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

Re: House Bill No. 2774 HD2 SD2 CD1

On July 6, 2010, House Bill No. 2774 entitled "A Bill for an Act Relating to Human Services" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purposes of this bill are to lift the restriction on the use of generic psychotropic medications for patients on Medicaid; to adjust the state death benefit to match the Federal Social Security Administration death benefit; and to limit the ability of the Administration to effectively use Medicaid moneys to address job creation and economic recovery.

The lifting of the restriction on the use of generic brand medications will help address the growing costs of prescription drugs for those patients that rely on psychotropic medicines. Requiring the State to only pay for brand name medications has placed an undue cost on the program without any proof that lower-cost generic drugs can not satisfactorily treat these patients.

Likewise, the bill ensures that the relatives of low-income individuals receiving government assistance payments receive similar lump sum amounts when the recipient passes away. This will have a modest cost savings for the state and provide equity in the treatment of these individuals who receive public assistance.

It is troubling that this bill contains a restriction against allowing my Administration and the next Administration to propose creative ideas on the use of federal and state Medicaid funds. Earlier this year, with the approval of senior federal officials in Washington DC, we launched the Hawaii Premium Plus program. This

The Honorable Colleen Hanabusa, President
and Members of the Senate
Page 2

program allows the State to use Medicaid funds to help offset the health care costs of new employees. This helps overcome one of the barriers employers face when deciding whether to hire or rehire an individual during difficult economic periods.

I am pleased that the program was approved by the Centers for Medicare and Medicaid Services (CMS) and the Department is working with local employers to start the hiring process. I am concerned that the ambiguities created by this bill's language made some businesses hesitant to participate and has cost us precious time in starting to enroll the unemployed in new jobs. This is indeed unfortunate, since getting people off of unemployment and back into the work force should be our united goal.

It should be noted that based on our legal analysis of this measure, we conclude the funding cap applies only to the state portion of the funds that will be spent for the Hawaii Premium Plus program.

For the foregoing reasons, I allowed House Bill No. 2774 to become law as Act 205, effective July 6, 2010, without my signature.

Sincerely,



LINDA LINGLE

A BILL FOR AN ACT

RELATING TO HUMAN SERVICES.

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

PART I

1
2 SECTION 1. The number of individuals who require treatment
3 for mental health issues is growing. Prescription medications
4 such as psychotropic drugs have become increasingly expensive
5 and are not always effective for every patient. With the
6 current difficult economic climate, alternatives must be
7 explored to implement cost-saving measures while preserving an
8 appropriate level of care. While the legislature finds that
9 patients should have access to necessary medication, the
10 medication should also be monitored for effectiveness, and the
11 possibility of using generic medications should be explored.

12 SECTION 2. Section 346-59.9, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§346-59.9 Psychotropic medication.** (a) This section
15 shall apply only to the QUEST, QUEST Expanded Access, and fee-
16 for-service programs administered by the department when the
17 department or the department's contracted health plan is the
18 primary insurer. When the department is the secondary insurer,



1 the department and its contracted health plans shall be
2 responsible only for the secondary insurer's share of any
3 psychotropic medication covered by the primary insurer.

4 ~~[(a)]~~ (b) The department and its contracted health plans
5 shall not impose any restriction or limitation on the coverage
6 for, or a recipient's access to, [psychotropic medication,
7 provided that the psychotropic medication shall be prescribed by
8 a psychiatrist, physician, or an advanced practice registered
9 nurse with prescriptive authority under chapter 457, duly
10 licensed in the State.] antipsychotic medication.

11 (c) The department and its contracted health plans shall
12 not impose any restriction or limitation on the coverage for, or
13 a recipient's access to, antidepressant medication other than:

14 (1) Requiring that an individual must have two failed
15 attempts on a generic antidepressant medication to
16 receive coverage for a new brand-name antidepressant
17 prescription; and

18 (2) Requiring that if an individual does not have two
19 failed attempts on a generic antidepressant
20 medication, that individual shall receive coverage for
21 a brand-name antidepressant medication with prior
22 authorization by the contracted health plan; provided



1 that while a prior authorization request for a brand-
2 name antidepressant medication submitted by the
3 prescriber is pending, a supply of the prescribed
4 medication sufficient to last until the request is
5 resolved shall be covered if requested by the
6 prescriber.

7 For purposes of this subsection, a "failed attempt" means
8 that the prescribed generic antidepressant medication up to the
9 maximum FDA-approved dosage is not effective in treating the
10 individual, or the individual's compliance is compromised due to
11 the side effects caused by the medication.

12 (d) The department and its contracted health plans shall
13 not impose any restriction or limitation on the coverage for, or
14 a recipient's access to, anti-anxiety medication other than:

15 (1) Requiring that an individual must have two failed
16 attempts on a generic anti-anxiety medication to
17 receive coverage for a new brand-name anti-anxiety
18 prescription; and

19 (2) Requiring that if an individual does not have two
20 failed attempts on a generic anti-anxiety medication,
21 that individual shall receive coverage for a brand-
22 name anti-anxiety medication with prior authorization



1 by the contracted health plan; provided that while a
2 prior authorization request for a brand-name anti-
3 anxiety medication submitted by the prescriber is
4 pending, a supply of the prescribed medication
5 sufficient to last until the request is resolved shall
6 be covered if requested by the prescriber.

7 For purposes of this subsection, a "failed attempt" means
8 that the prescribed generic anti-anxiety medication up to the
9 maximum FDA-approved dosage is not effective in treating the
10 individual, or the individual's compliance is compromised due to
11 the side effects caused by the medication.

12 (e) The department and its contracted health plans shall
13 not require any individual stable on a brand-name antidepressant
14 medication on or before July 1, 2010, to transfer to a different
15 antidepressant medication, generic or brand-name, unless the
16 individual's condition becomes unstable and requires the
17 medication to be replaced.

18 (f) The department and its contracted health plans shall
19 not require any individual stable on a brand-name anti-anxiety
20 medication on or before July 1, 2010, to transfer to a different
21 anti-anxiety medication, generic or brand-name, unless the



1 individual's condition becomes unstable and requires the
2 medication to be replaced.

3 (g) The department and its QUEST contracted health plans
4 shall have the authority to investigate fraud, abuse, or
5 misconduct.

6 ~~[(b)]~~ (h) The department shall report to the legislature
7 no later than twenty days before the convening of each regular
8 session on:

9 (1) The number of brand-name and generic prescriptions
10 written [~~pursuant to this section;~~] to which this
11 section applies; and

12 (2) The ~~[cost and impact of psychiatrists, physicians, or~~
13 ~~advanced practice nurses prescribing medications,~~
14 ~~pursuant to this section, that are not part of the~~
15 ~~existing formulary; and~~

16 ~~(3) The overall use of psychotropic medication under~~
17 ~~chapter 346.] amount expended on brand-name~~
18 prescriptions and the amount expended on generic
19 prescriptions written each fiscal year to which this
20 section applies.

21 (i) All psychotropic medications covered by this section
22 shall be prescribed by a psychiatrist, a physician, or an



1 advanced practice registered nurse with prescriptive authority
2 under chapter 457 and duly licensed in the state.

3 [~~e~~] (j) As used in this section [~~,"psychotropic"]:~~

4 "Anti-anxiety medication" means those medications included
5 in the United States Pharmacopeia's anxiolytic therapeutic
6 category.

7 "Antidepressant medication" means those medications
8 included in the United States Pharmacopeia's antidepressant
9 therapeutic category.

10 "Antipsychotic medication" means those medications included
11 in the United States Pharmacopeia's antipsychotic therapeutic
12 category.

13 "Psychotropic medication" means only [~~these agents~~]
14 antipsychotic, antidepressant, or anti-anxiety medications
15 approved by the United States Food and Drug Administration for
16 the treatment of mental or emotional disorders."

17 SECTION 3. The department of human services, in
18 conjunction with health care providers, health care plans, and
19 mental health advocates, shall submit a report detailing the
20 status of the implementation of part I of this Act, including
21 the numbers of persons that use each type of coverage provided



1 therein, to the legislature no later than twenty days prior to
2 the convening of the regular session of 2011.

3 PART II

4 SECTION 4. The department of human services currently
5 provides certain death benefits for individuals who were medical
6 assistance or financial assistance recipients at the time of
7 death. The legislature finds it appropriate for the department
8 of human services to issue a death benefit amount equivalent to
9 the Social Security Administration's one-time lump-sum death
10 benefit if the deceased individual is ineligible for the Social
11 Security Administration's one-time lump-sum death benefit, and
12 to bear a larger cost for certain services for unclaimed
13 corpses, if necessary.

14 SECTION 5. Section 346-15, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "~~§346-15~~ ~~[Burial of]~~ Death benefits for deceased medical
17 or financial assistance recipients ~~[or]~~ and disposition of
18 unclaimed corpses. (a) ~~[The]~~ Where the decedent was a medical
19 assistance or financial assistance recipient at the time of
20 death and is ineligible for the Social Security Administration's
21 one-time lump-sum death benefit, the department ~~[of human~~
22 ~~services]~~ may ~~[bear the cost of the burial of deceased medical~~



1 ~~or financial assistance recipients or unclaimed corpses. Burial~~
2 ~~services include the customary mortuary, crematory, cemetery,~~
3 ~~and other services essential in providing a dignified burial.]~~
4 issue a lump-sum death benefit in an amount equal to the Social
5 Security Administration's one-time lump-sum death benefit for
6 the year in which the recipient died.

7 (b) ~~[The department may pay for mortuary and crematory~~
8 ~~services to be furnished by any licensed provider of mortuary~~
9 ~~and crematory services. Mortuary and crematory payments shall~~
10 ~~be made to the extent of cost, or in the sum of \$400, whichever~~
11 ~~is less.]~~ The department may authorize and bear the cost of the
12 mortuary and crematory services for unclaimed corpses furnished
13 by any licensed provider of mortuary or crematory services.
14 Payments for mortuary and crematory services shall be made to
15 the extent of the cost, or in the sum of \$800 in total,
16 whichever is less, for each unclaimed corpse.

17 ~~[(c) The department may pay for cemetery services, to be~~
18 ~~furnished by any licensed provider of cemetery services.~~
19 ~~Cemetery payments shall be made to the extent of cost, or in the~~
20 ~~sum of \$400, whichever is less.~~



1 ~~(d) In cases where the decedent is survived by relatives,~~
2 ~~the relatives shall be permitted to make their own arrangements~~
3 ~~for the burial or cremation of their deceased relative.~~

4 ~~(e) The person submitting an application for funeral~~
5 ~~payments under the department's funeral payment program,]~~

6 (c) Any person submitting an application for the lump-sum
7 death benefit described in subsection (a), on behalf of a
8 deceased medical or financial assistance recipient, shall have
9 sixty days from the date of the death of the deceased to submit
10 the application [for funeral payments] to the department. [This
11 subsection shall not apply to applications submitted by the
12 respective county medical examiner or coroner on behalf of
13 unclaimed corpses.

14 ~~(f) All unclaimed corpses shall be cremated. The~~
15 ~~department of human services shall authorize the cremation of~~
16 ~~unclaimed corpses.~~

17 ~~(g)]~~ (d) A person or public or private agency, including
18 the department [~~of human services~~], shall not be liable for any
19 damage or subject to criminal prosecution for any act done
20 pursuant to and in compliance with this section.

21 ~~(h)]~~ (e) For the purposes of this section, "unclaimed
22 corpse" means the remains of any deceased person for whom no one



