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**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. (a) Any health insurer  
11 as 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 their spouses or their dependents may be  
18           or may have been covered by a health insurer and the

- 1 nature of the coverage that is or was provided by the  
2 health insurer, including the name, address, and  
3 identifying number of the plan in a manner prescribed  
4 by the State;
- 5 (2) Accept the State's right of recovery and the  
6 assignment to the State of any right of an individual  
7 or other entity to payment from the party for an item  
8 or service for which payment has been made for medical  
9 assistance under title 42 U.S.C. section 1396a  
10 (Section 1902 of the Social Security Act);
- 11 (3) Respond to any inquiry by the State regarding a claim  
12 for payment for any health care item or service that  
13 is submitted not later than three years after the date  
14 of the provision of such health care item or service  
15 or the date the State knew of the health care item or  
16 service, whichever is longer; and
- 17 (4) Agree not to deny a claim submitted by the State  
18 solely on the basis of the date of submission of the  
19 claim, the type or format of the claim form, or a  
20 failure to present proper documentation at the point-  
21 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 such claim is commenced within  
8           six years of the State's submission of such  
9           claim."

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

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

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

21           **"[+]§431L-1[+] Insurers prohibited from taking medicaid**  
22 **status into account.** Any health insurer (including a group

1 health plan, as defined in section 607(1) of the Employee  
2 Retirement Income Security Act of 1974, a self-insured plan, a  
3 health service benefit plan, a mutual benefit society, a  
4 fraternal benefit society [~~and~~], a health maintenance  
5 organization[+], a managed care organization, a pharmacy benefit  
6 manager, or other party that is, by statute, contract, or  
7 agreement, legally responsible for payment of a claim for a  
8 health care item or service) is prohibited, in enrolling an  
9 individual or in making any payments for benefits to the  
10 individual or on the individual's behalf, from taking into  
11 account that the individual is eligible for or is provided  
12 medical assistance under 42 U.S.C. section 1396a (Section 1902  
13 of the Social Security Act) herein referred to as medicaid, for  
14 this State, or any other state."

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

17 "[~~+~~]**§431L-2**[~~+~~] **State's right to third party payments.** (a)

18 To the extent that payment has been made under the state plan  
19 for medical assistance in any case where a third party has a  
20 legal liability to make payment for such assistance, the State  
21 has in effect laws under which, to the extent that payment has  
22 been made under the state plan for medical assistance for health

H.B. NO. 1099

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

5 (b) For purposes of this section, "third party" has the  
6 same meaning as "third person" contained in section 346-37."

7 SECTION 6. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

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

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INTRODUCED BY:

Calvin K. Boy

BY REQUEST

JAN 26 2009

**Report Title:**

Third Party Liability for Medicaid

**Description:**

Ensures 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.

JUSTIFICATION SHEET

DEPARTMENT: Human Services

TITLE: A BILL FOR AN ACT RELATING TO THIRD PARTY LIABILITY FOR MEDICAID.

PURPOSE: To ensure State compliance with 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.

MEANS: Amend chapter 431L, Hawaii Revised Statutes, by amending sections 431L-1 and 431L-2 and adding a new section and adding a new definition to section 346-1, Hawaii Revised Statutes.

JUSTIFICATION: 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.

P.L. 109-171, section 6035, amended section 1902(a)(25) of the Social Security Act to:

- 1) Clarify the specific entities considered "third parties" and "health insurers"; and
- 2) Mandate states to enact laws requiring health insurers:
  - a) to provide coverage, eligibility, and claims data needed by the State to identify potentially liable third parties;
  - b) to honor the assignment to the State of the medicaid recipient's right to payment for health care items or services; and

3) to not deny or refuse to pay claims submitted by medicaid based on procedural reasons for a period of three years from the date of service.

Impact on the public: None.

Impact on the department and other agencies:  
Statutory strengthening will enhance the department's efforts to successfully obtain third party payments for medicaid recipients reducing unnecessary State expenditures.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: HMS 902.

OTHER AFFECTED  
AGENCIES: Department of Commerce and Consumer Affairs,  
Department of the Attorney General

EFFECTIVE DATE: Upon approval.