

# H.B. NO. 1100

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## A BILL FOR AN ACT

RELATING TO MEDICAID LIENS.

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

1           SECTION 1. The legislature finds that it is necessary to  
2 clarify the law regarding the validity of any notice of intent  
3 to place a lien on real property or the filing of any claim  
4 relating to medicaid. The purpose of this Act is to clarify  
5 that when the department of human services gives notice of its  
6 intent to place a lien on real property or file any claim, to  
7 any medicaid recipient, or medicaid recipient's legal  
8 representative, surviving spouse, child, or designated  
9 representative, that notice is valid for purposes of any  
10 subsequent placement of any lien or the filing of any claim.

11           SECTION 2. Section 346-29.5, Hawaii Revised Statutes, is  
12 amended by amending subsection (d) to read as follows:

13           "(d) The department shall issue certificates of release or  
14 partial release upon satisfaction or partial satisfaction of the  
15 liens. Certificates of release or partial release of any real  
16 property lien issued by the director or the director's  
17 authorized representative shall be recorded in the bureau of  
18 conveyances. The director shall consider issuing conditional

1 certificates of release in cases of extreme hardship as set out  
2 in rules adopted under chapter 91. The registrar shall  
3 forthwith cause the same to be indexed in the general indexes in  
4 a like manner as the original liens. No fee shall be charged  
5 for any of the recording. The liens herein provided for shall  
6 take priority over any other lien subsequently acquired or  
7 recorded except tax liens and except that, in the estate of a  
8 beneficiary, the actual funeral expenses, the expenses of the  
9 last sickness, the cost of administration of the estate, and any  
10 allowance made to the surviving spouse and children for their  
11 support during administration of the estate, shall have priority  
12 and preference over the liens herein imposed, and over any claim  
13 against an estate filed under section 346-37.

14 Any notice of intent to file a lien or any claim delivered  
15 to any medicaid recipient, or any medicaid recipient's legal  
16 representative, surviving spouse, child, or designated  
17 representative shall be valid notice of the department's intent  
18 to file a lien or claim.

19 The liens shall be enforceable by the department by suit in  
20 the appropriate court or shall be enforceable as a claim against  
21 the estate of the recipient under section 346-37, having  
22 priority over all other debts except taxes, the actual funeral

1 expenses, the expenses of last sickness, the cost of  
2 administration of the estate, and any allowance made to the  
3 surviving spouse and children for their support during  
4 administration of the estate.

5 The liens shall be enforceable as a claim under section  
6 346-37 against the estate of a recipient under any circumstances  
7 if the estate is admitted to probate at the instance of any  
8 interested party.

9 Whenever the department is satisfied that the collection of  
10 the amount of assistance paid a recipient will not be  
11 jeopardized or that the release or waiver of the priority of the  
12 liens against the recipient's property, in whole or in part, is  
13 necessary to provide for the maintenance or support of the  
14 recipient, the recipient's spouse, or any minor or incapacitated  
15 child, it may release or waive the priority of the liens with  
16 respect to all or any part of the real property.

17 The recipient, the recipient's heirs, personal  
18 representatives, or assigns may discharge the liens at any time  
19 by paying the amount thereof to the department which shall  
20 execute a satisfaction thereof. The department may at its  
21 discretion compromise the collection of any such liens, but such  
22 compromise shall be made only when the recipient, the

1 recipient's heirs, personal representatives, or assigns prove  
2 that the collection of the full amount of the liens or claim  
3 would cause undue hardship or the liens or claim are otherwise  
4 uncollectible.

5       The proceeds from the enforcement, payment, or compromise  
6 of the liens shall be paid into the treasury of the State. If  
7 the amount of assistance reflected by the proceeds was paid in  
8 part by federal funds, the proper portion of these funds shall  
9 be paid by the director of finance to the treasury of the United  
10 States. The director of finance shall thereupon report such  
11 payment to the department. If the federal funds are not paid  
12 directly into the treasury of the United States, these federal  
13 funds shall be credited by the director of finance to the  
14 department for expenditure for assistance without need for  
15 further appropriation.

16       If at any time the federal government, or any agency or  
17 instrumentality thereof, requires, as a condition to any grant  
18 of assistance, the performance of conditions inconsistent with  
19 this section, or desisting from actions provided by this  
20 section, the governor may suspend, upon a finding to that effect  
21 and to the extent of such requirement, any provisions of this  
22 section to the end that such federal assistance may be received.

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1           The department shall submit an annual report to the  
2 legislature, which shall include a list of liens held by the  
3 department on real property. This report shall include but not  
4 be limited to a description of the value of the liens, the legal  
5 status of the liens, and when the liens were initiated.

6           The department shall adopt rules pursuant to chapter 91  
7 necessary for the purposes of this section."

8           SECTION 3. New statutory material is underscored.

9           SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY:

Calvin K. Ay

BY REQUEST

JAN 26 2009

**Report Title:**  
Medicaid Liens

**Description:**  
Clarifies existing law so the notice of the intent to place a lien on the real property of a Medicaid recipient will be valid if provided to the recipient or a designated representative of the recipient.

JUSTIFICATION SHEET

DEPARTMENT: Human Services

TITLE: A BILL FOR AN ACT RELATING TO MEDICAID LIENS.

PURPOSE: Clarify existing law so the notice of the intent to place a lien on the real property of a Medicaid recipient will be valid if provided to the recipient or a designated representative of the recipient.

MEANS: Amend section 346-29.5(d), Hawaii Revised Statutes (HRS).

JUSTIFICATION: The State is required to place a lien on the home property of Medicaid recipients in nursing or medical facilities under certain circumstances. The purpose of the lien is to secure recovery of Medicaid payments from the recipient's estate. The process to place the lien requires an evaluation of the recipient's circumstances to ascertain if the recipient is exempt from the placement of a lien, a notification of the State's intent to place a lien, and an opportunity to request a hearing to challenge the placement of a lien.

A recipient is exempt from the placement of a lien if the recipient can be reasonably expected to leave the facility and return to the home, or if the following relatives of the recipient are currently residing in the home: spouse; minor child; disabled or blind child; or a sibling with an equity interest in the home who resided in the home one year immediately prior to the recipient's admission to the nursing or medical facility.

The State has encountered difficulty in placing the lien and filing claims because some claim that a legal representative of a recipient is required for the process to

place the lien and have often been difficult to locate. The proposed amendment to the statute will allow a recipient's designated representative, spouse, and children to have standing in representing the recipient in the lien process. The proposed amendment does not alter the existing statutory criteria for the placement of the lien.

Impact to the public: No new impact.

Impact to the department and other agencies: State funds will be recovered from the estate of Medicaid recipients who had assets that were exempted during the period assistance was provided.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: HMS 401

OTHER AFFECTED  
AGENCIES: Department of the Attorney General.

EFFECTIVE DATE: Upon approval.