



STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809-0339

February 12, 2009

MEMORANDUM

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

FROM: Lillian B. Koller, Director

SUBJECT: **S.B. 918 – RELATING TO MEDICAID LIENS**
Hearing: Thursday, February 12, 2009, 1:45 PM.
Conference Room 016, State Capitol

PURPOSE: The purpose of this bill is to clarify that when the Department of Human Services gives notice of its intent to place a lien on real property or file any claim, to any Medicaid recipient, or Medicaid recipient's legal representative, surviving spouse, child, or designated representative, that notice is valid for purposes of any subsequent placement of any lien or the filing of any claim.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) strongly supports this Administration-sponsored bill that proposes to clarify the notification requirements of the Department's process to place a lien on the home property of a Medicaid recipient for purposes of recovering Medicaid payments. This bill in no way changes the criteria for when a lien is able to be placed; it merely strengthens the State's ability to recover funds from a lien.

The Department is required to place a lien on the home property of Medicaid recipients in nursing homes 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. The lien is for the amount of Medicaid funds paid on behalf of the recipient, and is recoverable upon the death of the recipient, or if the property is sold prior to the death of the recipient.

The provisions of Section 346-29.5 give the Department's lien priority over the liens of other creditors in recovering funds from the estate of the recipient. In 2008, the Department recovered \$1,121,340.77 from 13 liens.

There have been instances in which a claims court ruled that the priority provision of the statute was not applicable to the Department's lien because the notice of intent to place a lien was provided to someone other than the recipient or the recipient's legal representative. In those instances, other creditors were allowed to recover funds from the recipient's estate before the Department.

Medicaid recipients who are nursing home residents rarely represent themselves when applying for Medicaid. In most instances, a spouse, a legal representative, a child, or another designated representative assumes the responsibility of addressing all communications and issues with the Department. The amendment will clarify that the notice of intent to place a lien is valid when provided to the recipient, their spouse, legal representative, child, or designated representative.

Thank you for this opportunity to testify.



TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FIFTH LEGISLATURE, 2009

ON THE FOLLOWING MEASURE:

S.B. NO. 918, RELATING TO MEDICAID LIENS.

BEFORE THE:

SENATE COMMITTEE ON HUMAN SERVICES

DATE: Thursday, February 12, 2009 **TIME:** 1:45 PM

LOCATION: State Capitol, Room 016

TESTIFIER(S): Mark J. Bennett, Attorney General
or Michael S. Vincent, Deputy Attorney General

Chair Chun Oakland, Vice Chair Ihara, and Committee Members:

The Department of the Attorney General strongly supports passage of this bill.

The proposed amendment will clarify what constitutes valid notice for purposes of placing liens on the home property of a recipient receiving medical assistance who is an inpatient. Pursuant to section 346-29, Hawaii Revised Statutes, applications for public assistance may be made by the applicant or someone acting in the applicant's behalf. This flexibility in authority has created an ongoing problem when the Department takes action to recover moneys owed to the State by the recipient.

The State is required to place a lien on the home property of Medicaid recipients in nursing or medical facilities under certain circumstances to secure recovery of Medicaid payments from the recipient's estate. It is not uncommon to encounter difficulty in placing liens and filing claims due to family members supposedly acting on behalf of a recipient and later claiming that they are not the applicant's legal representative. At least one court has ruled that the notice of intent to place a lien in this type of situation was

invalid because the person acting on behalf of the recipient did not have the legal authority to do so.

The proposed amendment will clarify that in these situations notice to the recipient or the recipient's legal representative, surviving spouse, child, or designated representative is valid notice for purposes of filing a lien or claim.

FAX-1-800-587-6657 OR (808) 508-0001

TESTIMONY - THE SENATE - 25TH LEGISLATURE

REGULAR SESSION OF 2009 2/12/09 1:45 PM
CONF. RM. 1016 STATE CAPITOL 415 BERETANIA ST
HONOLULU, HI TRUCE END

NAME: MARGARET LEVY-DORANDS, CNA

POSITION: BOARD MEMBER

ORGANIZATION: STATEWIDE INDEPENDENT LIVING COUNCIL

DATE: 2/12/09

TIME: 1:45 PM

COMMITTEE DIRECTION: COMMITTEE ON HUMAN SERVICES
SEN. CHUN OAKLAND, SEN. IHARA

- 1. MEASURE # SB 1210 - I AM AGAIN THIS MEASURE
- 2 " " SB 1189 - "
- 3 " " SB 915 - "
- 4 " " SB 918 - "
- 5 " " SB 1330 - "
- 6 " " SB 924 - "
- 7 " " SB 1177 - "
- 8 " " SB 913 - "
- 9 " " SB 916 - "

- I AM FOR THE FOLLOWING MEASURES
- 10. MEASURE # SB 1016 - I AM FOR THIS MEASURE
- 11. " " SB 133 - "
- 12. " " SB 801 - "
- 13 " " SB 1006 - "
- 14 " " SB 1014 - "

THANK YOU
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