HOUSE OF REPRESENTATIVES
TWENTY-SIXTH LEGISLATURE, 2011
STATE OF HAWAII

H.B. NO. 906

A BILL FOR AN ACT

RELATING TO HEALTH.

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

PART I

SECTION 1. Fewer physicians have been providing on-call services in hospital emergency departments in recent years due to liability issues and inadequate reimbursements. As a result, emergency departments are experiencing increased overcrowding and longer waiting times. Nationally, for example, seventy-three per cent of emergency departments report inadequate on-call coverage by specialist physicians. Specialists who are particularly difficult to secure for on-call coverage include orthopedic surgeons, neurosurgeons, plastic surgeons, trauma surgeons, hand surgeons, obstetrician-gynecologists, neurologists, ophthalmologists and dermatologists.

The purpose of this part is to create a financial incentive in the form of a tax credit for physicians who provide on-call services to emergency departments.

SECTION 2. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to part III to be appropriately designated and to read as follows:

"§235- **Emergency room physician tax credit.** (a) There shall be allowed to each qualified taxpayer subject to the taxes imposed by this chapter, an emergency room physician tax credit that shall be applied to the qualified taxpayer's net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed.

(b) The tax credit shall be in an amount equal to five per cent of the amount of medical malpractice insurance premium paid by the qualified taxpayer for the taxable year in which the credit is properly claimed.

(c) As used in this section, "qualified taxpayer" means a physician licensed under chapter 453 who:

(1) Provides medical care in a state-approved hospital emergency room on an on-call basis;

(2) Has worked a minimum of five hundred and seventy-six on-call hours in the year for which the tax credit is claimed; and

(3) Does not owe the State delinquent taxes, penalties, or interest.

(d) If the tax credit claimed by the qualified taxpayer under this section exceeds the qualified taxpayer's income tax liability, the excess of credit over liability shall be refunded to the qualified taxpayer; provided that the tax credit properly claimed by a qualified taxpayer who has no income tax liability shall be paid to the qualified taxpayer; and provided further that no refunds or payments on account of the tax credit allowed by this section shall be made for amounts less than $1.

(e) The director of taxation shall prepare forms that may be necessary to claim a credit under this section, may require proof of the claim for the tax credit, and may adopt rules pursuant to chapter 91 necessary to effectuate the purposes of this section.

(f) Claims for the tax credit under this section, including any amended claims, shall be filed on or before the end of the twelfth month following the taxable year for which the credit may be properly claimed."

PART II

SECTION 3. The legislature finds that changes in demographics, the delivery of health care services, and the escalating costs of education have resulted in severe shortages of health care professionals. A poor distribution of health

care professionals has resulted in a surplus of these professionals in some areas of the State and a shortage in other parts of the State, particularly in the more rural areas. The rural shortage areas often require more services because the health care needs are greater due to socio-economic or geographic circumstances. The salary potential for shortage areas is often not as favorable when compared to non-shortage areas, resulting in many health care practitioners being financially unable to serve in those shortage areas.

The legislature further finds that to successfully address the health care shortage areas within the State:

(1) A loan repayment program should be structured to obtain federal matching funds that would be used to repay eligible student loans in exchange for a service commitment by physicians and dentists practicing in health professional shortage areas; and

(2) A recruitment program should be implemented. The program would not receive federal matching funds. Incentives would be awarded to public or private nonprofit organizations, communities, or recruitment health professionals practicing in areas designated by the department of business, economic development, and

tourism that are experiencing a shortage of health care professionals. Unlike the loan repayment program, this program will be open to all health care professionals, including physicians, dentists, mid-level practitioners, pharmacists, allied health professionals, and specialists, for example, orthopedic surgeons, for whom there is an acknowledged need in some areas of the State. The incentives could be used also to provide financial support for spouses and families of recruitment health professionals, which is critical in recruiting and retaining health care professionals in these areas. Finally, unlike the loan repayment program, recruitment health professionals would be able to practice in geographic areas not covered under the loan repayment program.

SECTION 4. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"**CHAPTER**

HAWAII HEALTH CORPS PROGRAM

PART I. GENERAL PROVISIONS

§ **-1 Definitions.** As used in this chapter:

"Applicant" means an individual who has submitted a completed application for the loan repayment program or the recruitment program and meets the application requirements established by the department for the respective program.

"Approved site" means, for the purposes of the loan repayment program, a provider site that is a public or nonprofit private entity located in a health professional shortage area and approved by the department.

"Dentist" means an individual licensed to practice dentistry in the state under chapter 448.

"Department" means the department of business, economic development, and tourism.

"Eligible education" means education and training programs approved by the department that lead to eligibility for licensure as a repayment health care professional.

"Eligible expenses" means reasonable expenses associated with the costs of acquiring an eligible education such as tuition, books, equipment, fees, room and board, and other expenses determined by the department.

"Health professional shortage area" means an area in the State, designated by the department of health, where there are shortages of health professionals. In making health

professional shortage area designations in the State, the department of health shall be guided by applicable federal standards.

"Incentives" means the cash or in-kind award made to a recruitment recipient and includes awards made to a spouse or the family of a recruitment health professional.

"Loan repayment program" means the loan repayment program administered by the department.

"Physician" means an individual licensed to practice medicine in the State pursuant to chapter 453.

"Qualifying educational loan" means a government or commercial loan for eligible expenses.

"Recruitment health professional" includes physicians, allopathic and osteopathic physicians (family practitioners, internists, pediatricians, obstetricians and gynecologists, and general psychiatrists), nurse practitioners, certified nurse-midwives, physician assistants, dentists, registered clinical dental hygienists, clinical or counseling psychologists, social workers, psychiatric nurse specialists, mental health counselors, licensed professional counselors, marriage and family therapists, and health care specialists.

"Recruitment health professional shortage area" means a health professional shortage area or other area determined by the department of health to be experiencing a shortage of recruitment health professionals.

"Recruitment program" means the health professional recruitment and retention program that is administered by the department.

"Recruitment recipient" means either a recruitment health professional or a public or private nonprofit organization or community that employs a recruitment health professional.

"Repayment health care professional" means a primary care physician, family care practitioner, internist, pediatrician, obstetrician, physician assistant, advance practice registered nurse, naturopathic physician, general psychologist, or general practice dentist.

"Repayment participant" means a health care professional who has received a loan repayment award pursuant to the loan repayment program established under section -11.

PART II. LOAN REPAYMENT PROGRAM

§ -11 **Loan repayment program established.** There is established the loan repayment program within the department. The loan repayment program shall be administered in a manner

that is consistent with the provisions of Title 42 United States Code Section 254q-1, as may be amended from time to time.

§ **-12 Administration.** The loan repayment program shall be administered by the department. The department shall:

(1) Accept applications from interested persons;

(2) Develop criteria for the selection of participants in the loan repayment program;

(3) Select participants for the loan repayment program; provided that the department shall not select more than twenty individuals in one year and have no more than one hundred individuals participating in the loan repayment program at any one time, subject to available funding and the need for health care professionals in health professional shortage areas;

(4) Collect and manage repayments from repayment participants who do not meet their service obligations under this chapter, including enforcing the remedies for breach of the service obligation;

(5) Publicize and market the loan repayment program, particularly to maximize participation among individuals in health professional shortage areas;

(6) Solicit and accept grants and donations from public and private sources for the loan repayment program;

(7) Develop criteria for and enter into a contract with a participant of the loan repayment program that obligates the participant to complete the service obligation and to comply fully with the terms and conditions of the loan repayment program;

(8) Administer the recruitment program separately from the loan repayment program;

(9) Establish a loan repayment program advisory group, comprising representatives from government and the health profession, including providers, community health centers, and professional organizations, to:

(A) Assist the department in developing criteria to select participants;

(B) Determine areas having the greatest need for health professionals; and

(C) Advise on other matters related to the administration of the loan repayment program.

The same members may serve on the advisory group for the loan repayment program and the recruitment program; and

(10) Take any and all other actions necessary to administer the loan repayment program.

§ -13 **Eligibility.** To be eligible to participate in the loan repayment program, an individual shall:

(1) Submit an application to the department;

(2) Have a signed employment agreement or contract with an approved site;

(3) Provide copies of loan documentation;

(4) Be a United States citizen or a naturalized citizen of the United States;

(5) Have no other outstanding contractual obligations for health professional services to the federal government, state government, or other entity or organization, unless that service obligation will be completely satisfied before the contract for the service obligation under the loan repayment program is signed;

(6) Have no judgment lien against the individual's property for a debt to the United States;

(7) Have no history of failing to comply with, or inability to comply with, service or payment obligations;

(8) Has not defaulted on any federal payment obligation, even if the creditor considers the obligation to be in good standing;

(9) Has not breached a prior service obligation to the federal, state, or local government or other entity or organization, even if the obligation was subsequently satisfied;

(10) Has not had any federal debt written off as uncollectible (pursuant to Title 31 United States Code Section 3711(a)) or had any federal service or payment obligation waived;

(11) Perform the service obligation at an approved site;

(12) Provide full-time clinical services at an approved site;

(13) Charge for the individual's professional services at the usual and customary prevailing rates in the area where the services are provided; except that if any patient is unable to pay the charge, that patient may be charged at a reduced rate or not charged any fee;

(14) Agree not to discriminate on the basis of the patient's ability to pay or on the basis that the payment for care will be made pursuant to medicare,

medicaid, or the state children's health insurance program;

(15) Agree to accept assignment under medicare under Title XVIII of the Social Security Act, enter into an appropriate agreement with the state agency that administers the state plan for medicaid under Title XIX of the Social Security Act, and enter into an appropriate agreement with the state children's health insurance program to provide service to children under Title XXI of the Social Security Act;

(16) Agree to pay back an amount specified by the department if the service obligation is not completed for any reason;

(17) Be a licensed and qualified repayment health care professional in the State and maintain licensure and qualifications during the service obligation period;

(18) Obtain and maintain any other licensure required of a repayment health care professional in the State; and

(19) Meet any other requirements that may be established by the department.

§ **-14 Preference and selection.** (a) In selecting participants for the loan repayment program, the department shall give preference to the following, in descending priority:

(1) Graduates of the University of Hawaii John A. Burns school of medicine;

(2) Graduates of out-of-state medical schools who are legal residents of Hawaii and are engaged in medical residency or practicing medicine in Hawaii; and

(3) Graduates of out-of-state medical schools who are graduates of high schools located in Hawaii and are engaged in medical residency or practicing medicine in Hawaii.

(b) The criteria used to select repayment participants for the loan repayment program shall be determined by the department. The criteria may include:

(1) The need for primary care physicians and dentists in health professional shortage areas;

(2) The willingness of an applicant to work full-time in the health professional shortage area; and

(3) The likelihood of the applicant continuing to practice in the health professional shortage area after the service obligation has been completed.

§ -15 **Eligible expenses.** The department shall only repay qualifying educational loans.

§ -16 **Amount of the award.** Subject to the availability of funding and the need for repayment health care professionals in health professional shortage areas, the amount of the award shall be determined by the department but shall not exceed the maximum amounts permitted to be awarded to participants of the loan repayment program under Title 42 United States Code Section 254q-1, as may be amended from time to time.

§ -17 **Service obligation.** A repayment participant shall serve full-time at an approved site for a minimum of two years with the possibility of extending the service obligation for one-year terms, for a total service obligation not to exceed five years. Periods of internship, preceptorship, clinical training, or other postgraduate training shall not be counted toward the service obligation.

§ -18 **Cancellation of service obligation.** The department may cancel a contract with a repayment participant only upon the death of the repayment participant.

§ -19 **Waiver of service obligation.** The department may permanently waive the service obligation of a repayment participant upon the receipt of documentation from the repayment

participant that a medical condition or a personal situation makes compliance with the service obligation permanently impossible, as determined by the department.

§ **-20 Suspension.** The department may temporarily suspend a repayment participant's service obligation upon the receipt of documentation from the repayment participant of a medical condition or personal situation that makes compliance with the service obligation temporarily impossible, as determined by the department.

§ **-21 Default.** A repayment participant who fails to complete the service obligation shall pay as a penalty the sum of the following:

(1) The pro rata amount paid to or on behalf of a repayment participant for any period of obligated service not served;

(2) The amount equal to the number of months of obligated service not served multiplied by $7,500; and

(3) Interest on the amounts under paragraphs (1) and (2) at the maximum prevailing interest rate determined by the Treasurer of the United States from the day of the default;

provided that the amount the State is entitled to collect shall not be less than $31,000.

§ **-22 Hawaii health corps first responder service obligation.** If a civil defense or other emergency is proclaimed under chapter 127 or 128, physicians and dentists participating in the Hawaii health corps program may be ordered into service by the governor as a critical action relief lineup to serve in areas of the State and in a capacity determined by the director.

§ **-23 Hawaii health corps special fund.** (a) There is established within the state treasury a special fund to be known as the Hawaii health corps special fund to be administered and expended by the department.

(b) The fund shall be used to provide stipends to qualifying Hawaii health corps physicians and dentists pursuant to this chapter.

(c) Moneys deposited into the fund shall include appropriations made by the legislature from general funds, private contributions, stipend repayments, and interest on and other income from the fund, which shall be separately accounted for.

§ **-24 Rules.** The department may adopt rules under chapter 91 relating to the loan repayment program.

PART III. RECRUITMENT PROGRAM

§ **-31 Established.** There is established the recruitment program within the department.

§ **-32 Administration.** The recruitment program shall be administered by the department and shall:

(1) Maintain listings of communities and areas within the State with a need for recruitment health professionals;

(2) Maintain listings of recruitment health professionals interested in working in the communities and areas within the State with a need for recruitment health professionals;

(3) Serve as an intermediary between communities or public or private nonprofit organizations and recruitment health professionals desiring to practice in recruitment health professional shortage areas;

(4) Collaborate with communities and public or private nonprofit organizations to recruit and retain recruitment health professionals to work and live in communities experiencing a shortage of recruitment health professionals;

(5) Collaborate with recruitment health professionals desiring to work in recruitment health professional shortage areas;

(6) Develop funding models for the recruitment program that provide for security and flexibility for recruitment health professionals;

(7) Develop incentive payment structures and packages that support recruitment health professionals, their spouses, and families, including professional liability insurance relief, cost of living allowances, income guarantee payments, housing allowances, vehicles, vehicle allowances, continuing medical education, telemedicine capabilities, waivers of fees, or employment opportunities for the spouses of recruitment health professionals;

(8) Collaborate with other agencies to minimize or remove regulatory barriers to relocating or practicing in health professional shortage areas;

(9) Select recruitment recipients using criteria established by the department;

(10) Publicize and market the recruitment program;

(11) Solicit and accept grants and donations from public and private sources for the recruitment program;

(12) Administer the recruitment program separately from the loan repayment program, except to the extent provided in this chapter;

(13) Enter into a contract with a recruitment recipient that obligates the recruitment health professional to provide the services of the recruitment health professional in a recruitment health professional shortage area for the length of the service obligation;

(14) Establish a recruitment program advisory group, comprising representatives from government and the health profession, including providers, community health centers, and professional organizations, to:

(A) Assist the department in developing criteria to select participants for the recruitment program;

(B) Identify areas having the greatest need for health professionals; and

(C) Advise on other matters related to the administration of the recruitment program.

The same members may serve on the advisory group for the loan repayment program and the recruitment program; and

(15) Take any and all other actions necessary to administer the recruitment program.

§ -33 **Selection and preference.** (a) In selecting recruitment recipients to participate in the recruitment program, the department shall give first priority preference to recruitment health professionals who are:

(1) Graduates of the University of Hawaii John A. Burns school of medicine;

(2) Graduates of a Hawaii residency program; or

(3) Residents of the State of Hawaii who have obtained residency through a minimum of three of the following criteria:

(A) Legal residence of the applicant for at least twelve months;

(B) Legal residence of the applicant's parents;

(C) The applicant's place of birth;

(D) Location of the high school from which the applicant graduated;

(E) The applicant is native Hawaiian;

(F) Location of the college or university that the applicant attended; or

(G) The applicant's parent or legal guardian is a University of Hawaii John A. Burns school of medicine graduate, graduate of a Hawaii residency program, or is a University of Hawaii John A. Burns school of medicine faculty member.

(b) The department shall give second priority preference to recruitment health professionals who are graduates of out-of-state medical schools or residency programs.

(c) The department shall develop criteria for selecting participants for the recruitment program. The criteria may include:

(1) The need for recruitment health professionals in recruitment health professional shortage areas;

(2) The willingness of a recruitment health professional or a recruitment health professional employed by an applicant to work full-time in recruitment health professional shortage areas; and

(3) The likelihood that a recruitment health professional or a recruitment health professional employed by the applicant will continue to practice in a recruitment

health professional shortage area after the service obligation has been completed.

§ -34 **Award of incentives.** (a) Incentives shall be awarded only to recruitment recipients selected to participate in the recruitment program.

(b) Subject to available funding and the need for recruitment health professionals in a recruitment health professional shortage area, the amount of the incentives awarded to each recruitment recipient shall be determined by the department but shall not exceed $17,500 per recruitment recipient per year.

§ -35 **Eligibility.** (a) The recruitment program shall accept applications from recruitment health professionals or public or nonprofit private entities or communities intending to employ or currently employing a recruitment health professional.

(b) To be eligible to participate in the recruitment program, a public or nonprofit private entity or community shall employ or intend to employ and provide the services of a recruitment health professional for the length of the service obligation in the recruitment health professional shortage area.

(c) To be eligible to participate in the recruitment program, a recruitment health professional shall:

(1) Be a United States citizen or a naturalized citizen of the United States;

(2) Provide full-time services of a recruitment health professional in the recruitment health professional shortage area;

(3) Charge for the recruitment health professional's professional services at the usual and customary prevailing rates in the area where the services are provided, except that if a patient is unable to pay the charge, that patient may be charged at a reduced rate or not charged any fee;

(4) Agree not to discriminate on the basis of the patient's ability to pay or on the basis that the payment for the care will be made pursuant to medicare, medicaid, or the state children's health insurance program;

(5) Agree to accept assignment under medicare under Title XVIII of the Social Security Act, enter into an appropriate agreement with the state agency that administers the state plan for medicaid under Title XIX of the Social Security Act, and enter into an appropriate agreement with the state children's health

insurance program to provide service to children under Title XXI of the Social Security Act;

(6) Agree to pay back an amount specified by the department if the service obligation is not completed for any reason;

(7) Be a licensed and qualified recruitment health professional in the State and maintain the licensure and qualifications during the service obligation period;

(8) Obtain and maintain any other licensure required of recruitment health professionals in the State;

(9) Provide the services of a recruitment health professional in a recruitment health professional shortage area; and

(10) Meet any other requirements that may be established by the department.

§ -36 **Service obligation.** A recruitment health professional who participates in the recruitment program shall practice full-time in a recruitment health professional shortage area for a minimum of two years with the possibility of extending the service obligation for one-year terms for a total service obligation not to exceed five years. Periods of

internship, preceptorship, clinical training, or other post-graduate training shall not be counted toward the service obligation.

§ -37 **Recruitment health professional shortage areas.** The recruitment recipients shall be located in and shall provide the services of a recruitment health professional in a recruitment health professional shortage area.

§ -38 **Waiver of service obligation.** The department may permanently waive the service obligation of a recruitment recipient upon the receipt of documentation from the recruitment recipient that a medical condition or a personal situation makes compliance with the service obligation permanently impossible, as determined by the department.

§ -39 **Suspension.** The department may temporarily suspend the service obligation upon the receipt of documentation by the recruitment recipient of a medical condition or personal situation that makes compliance with the service obligation temporarily impossible, as determined by the department.

§ -40 **Default.** A participant of the recruitment program who fails to complete the service obligation shall pay as a penalty the sum of the following:

(1) The pro rata amount paid to or on behalf of a participant of the recruitment program for any period of obligated service not served;

(2) The amount equal to the number of months of obligated service not served multiplied by $7,500; and

(3) Interest on the amount under paragraphs (1) and (2) at the maximum prevailing interest rate determined by the Treasurer of the United States from the day of the default;

provided that the amount the State is entitled to collect shall not be less than $31,000.

§ **-41 Rules.** The department may adopt rules under chapter 91 relating to the recruitment program.

PART IV. FIRST RESPONDERS

§ **-51 First responders.** All participants of the loan repayment program and recruitment program shall serve as first responders in the event of a declared emergency in the State or at the request of the director of health.

PART V. COORDINATION OF PROGRAMS

§ **-61 Coordination.** Notwithstanding the requirement that the loan repayment program and recruitment program shall be

administered separately, pursuant to sections -12 and -32, the department shall:

(1) Determine the need for repayment health care professionals and recruitment health professionals in areas of the State experiencing a shortage of health care professionals; and

(2) Select participants for the respective programs.

§ -62 **Coordination of funds.** Funds appropriated by the legislature for the purposes of this chapter or received from private sources may be allocated by the department between the loan repayment program and recruitment program based on the need for the funds and the need for either repayment health care professionals or recruitment health professionals within the State."

SECTION 5. Chapter 201, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

"§201- **Hawaii health corps program.** The department of business, economic development, and tourism shall administer the Hawaii health corp program, pursuant to chapter ."

SECTION 6. (a) The department of business, economic development, and tourism shall implement the Hawaii health corps program no later than June 30, 2012.

(b) For the purposes of efficiency in the implementation of the Hawaii health corps program, the department shall award a minimum of thirty stipends of $30,000 per recipient in the first year of the program, an additional thirty stipends of $30,000 per recipient in the second year of the program, and an additional thirty stipends of $30,000 per recipient in the third year of the program. Thereafter, the department shall award annually a maximum of one hundred stipends.

(c) The director of business, economic development, and tourism shall report to the legislature on the status of the Hawaii health corps program no later than twenty days prior to the convening of each regular session of the legislature beginning with the regular session of 2012.

SECTION 7. If any part of this part is found to be in conflict with federal requirements that are a prescribed condition for the allocation of federal funds to the State, the conflicting part of this part is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the

remainder of this part in its application to the agencies concerned. The rules under this Act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the State.

SECTION 8. There is appropriated out of the general revenues of the State of Hawaii the sum of $ or so much thereof as may be necessary for fiscal year 2011-2012 and the same sum or so much thereof as may be necessary for fiscal year 2012-2013 to carry out the purposes of this part.

The sums appropriated shall be expended by the department of business, economic development, and tourism for the purposes of this part.

PART III

SECTION 9. The legislature has historically recognized the importance of making medicaid coverage available for the State's most vulnerable populations, and understands that medicaid payments to providers must be sufficient to cover the actual costs of the care provided. Through the continued efforts of Hawaii's congressional delegation, a federal medicaid disproportionate share hospital appropriation of $10,000,000 per year (or $2,500,000 per quarter) has been secured for Hawaii through 2019. However, these funds cannot be drawn down without

a matching state appropriation. The legislature finds that the combined state and federal funding will help to provide continuing health care in Hawaii's communities.

The appropriation contained in this part matches $10,000,000 in federal disproportionate share hospital funds that are available for the second, third, and fourth quarters of fiscal year 2010 and the first quarter of fiscal year 2011.

The legislature acknowledges that the amount of the state match is dependent upon the federal medical assistance percentage in the year the funds are spent. For fiscal year 2010, Hawaii's federal medical assistance percentage is 54.24 per cent, meaning that in order to draw down the $7,500,000 in available federal disproportionate share hospital funds for the three quarters in 2010, the State is obligated to provide the remainder, or 45.76 per cent, of the total funding, which is $6,327,434. For fiscal year 2011 Hawaii's federal medical assistance percentage is 51.79 per cent. To draw down the $2,500,000 in federal disproportionate share hospital funds for the first quarter of 2010, the State is obligated to provide $2,327,187. The total for the four quarters is $8,654,621.

SECTION 10. There is appropriated out of the general revenues of the State of Hawaii the sum of $8,654,621 or so much

thereof as may be necessary for fiscal year 2011-2012 to match the federal disproportionate share hospital allowance allocated to the State.

The sum appropriated shall be expended by the department of human services for the purposes of this part.

PART IV

SECTION 11. The purpose of this part is to ensure that Hawaii is consistent with the efforts of federal agencies to control health care-associated infections. This part also ensures that the department of health has access to health care-associated infection data reported by Hawaii's health care providers to the federal government. In addition, this part requires the Hawaii legislature to be updated on federal and state efforts to report health care-associated infections.

SECTION 12. Chapter 321, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§321- **Health care-associated infection reporting.** (a) Each health care facility in Hawaii that is certified by the Centers for Medicare and Medicaid Services shall report information about health care-associated infections to the Centers for Disease Control and Prevention's national healthcare

safety network, as specified in the rules of the Centers for Medicare and Medicaid Services.

(b) Health care facilities shall authorize the Centers for Disease Control and Prevention to allow the department to access health care-associated infection data reported by Hawaii's health care providers to the national healthcare safety network.

(c) The department may adopt rules pursuant to chapter 91 to require that health care-associated infections that are multidrug-resistant be reported to the department through the national healthcare safety network. The rules shall specify which health care facilities are required to report those health care-associated infections that are multidrug-resistant through the national healthcare safety network, as well as the patient populations that are to be targeted in the reports. The first year of reporting required under this subsection shall be a pilot test of the reporting system and shall not be reported or disclosed to the public.

(d) The department shall preserve patient confidentiality. The department shall not disclose to the public any patient level data obtained from any health care provider.

(e) The department may issue reports to the public about health care-associated infections that aggregate data so that no

individual patient can be identified. The reports may identify individual health care facilities. The reports shall utilize the methodology or any part of the methodology developed by the Centers for Disease Control and Prevention and the Centers for Medicare and Medicaid Services for national reporting of health care-associated infections.

(f) Health care-associated infection information held by the department as a result of reporting under this part is not subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceeding, except that health care-associated infection information otherwise available from other sources is not immune from subpoena, discovery, or introduction into evidence through those sources solely because they were provided as required by this section.

(g) For the purposes of this section:

"Department" means the department of health.

"Health care facility" means any entity that falls within the definition of "health care facility" in section 323D-2."

SECTION 13. The department of health shall submit a report to the legislature providing an update on health care-associated infection reporting required under section 12 of this Act. The

report shall be submitted no later than twenty days prior to the convening of the regular session of 2012.

PART V

SECTION 14. The Healthcare Association of Hawaii has established a patient safety and quality committee whose mission is to improve the quality of health care delivered by the full range of provider organizations represented by Healthcare Association of Hawaii members. The committee, which includes representatives of hospitals, nursing homes, home care agencies, and hospices, would like to examine medical cases that apply to various types of provider organizations. However, in order to ensure full and free discussion, information about the cases must be protected from its potential use in medical malpractice lawsuits.

The importance of protecting peer review and quality assurance of health care is recognized in Hawaii by statute in section 624-25.5, Hawaii Revised Statutes. The intent of this section is to encourage robust discussion that leads to changes in policies, procedures, or practices. The absence of these protections would limit discussion and therefore limit improvements in the quality of care.

Until recently, these protections were restricted to committees created by individual facilities. However, Act 133, Session Laws of Hawaii 2010, extended protection to multidisciplinary quality assurance committees convened and conducted by the department of health to monitor, improve, and evaluate emergency and trauma systems.

The purpose of this part is to establish that interdisciplinary quality assurance committees composed of members from various health care organizations have similar protections as those committees formed by hospitals, health maintenance organizations, and statewide trauma care systems.

SECTION 15. Section 624-25.5, Hawaii Revised Statutes, is amended by amending the definition of "quality assurance committee" to read as follows:

""Quality assurance committee" means [~~an~~]:

(1) An interdisciplinary committee established by the board of trustees or administrative staff of a licensed hospital, clinic, long-term care facility, skilled nursing facility, assisted living facility, home care agency, hospice, health maintenance organization, preferred provider organization, preferred provider network providing medical, dental,

or optometric care, or an authorized state agency whose function is to monitor and evaluate patient care[~~,~~] to identify, study, and correct deficiencies in the health care delivery system [~~to reduce~~], with a goal of reducing the risk of harm to patients [~~and improve~~], improving patient safety, or otherwise [~~improve~~] improving the quality of care delivered to patients[~~.~~]; or

(2) An interdisciplinary committee composed of representatives of a group of organizations described in paragraph (1) that is established collectively by the boards of trustees or administrative staff of these organizations whose function is to monitor and evaluate patient care to identify, study, and correct deficiencies in the health care delivery system, with a goal of reducing the risk of harm to patients, improving patient safety, or otherwise improving the quality of care delivered to patients."

PART VI

SECTION 16. Hawaii has enjoyed one of the highest rates of health care insurance coverage in the nation for more than thirty years, largely due to the prepaid health care act. The

director of labor and industrial relations administers the prepaid health care act and has the authority to determine which health plans may operate in Hawaii. The director of labor and industrial relations is advised by the prepaid health care advisory council.

The prepaid health care advisory council currently consists of a maximum of seven members, appointed by the director of labor and industrial relations, and includes representatives of the medical and public health professions, representatives of consumer interests, and persons experienced in prepaid health care protection. Health care provider organizations are not currently represented on the prepaid health care advisory council.

The purpose of this part is to include representatives from health care organizations on the prepaid health care advisory council, in order to give the council valuable perspectives on the design of health plan benefits. This part also increases the maximum membership of the prepaid health care advisory council from seven to nine.

SECTION 17. Section 393-7, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) The prepaid health care advisory council shall be appointed by the director and shall include representatives of the medical and public health professions, representatives of health care provider organizations, representatives of consumer interests, and persons experienced in prepaid health care protection; provided that a person representing a health maintenance organization under chapter 432D, a mutual benefit society issuing individual and group hospital or medical service plans under chapter 432, or any other health care organization shall not be a member. The membership of the council shall not exceed [~~seven~~] nine individuals."

PART VII

SECTION 18. QUEST expanded access is a medicaid-managed care program that replaced a fee-for-service program in 2009, and provides care to low-income individuals who are aged, blind, or disabled. These individuals typically have multiple medical conditions and require care from different health care providers. The annual budget for QUEST expanded access is $500,000,000.

The goals of QUEST expanded access include a reduction in the fragmentation of care and the assurance of coordination across the health care continuum. In addition, the program is

designed to be fiscally predictable, stable, and sustainable in order to assure access to high quality, cost-effective care.

However, despite these high ideals, enrollees, advocates, and health care providers have expressed serious concerns that QUEST expanded access is failing to meet its stated goals and that many enrollees are not receiving adequate care.

QUEST expanded access should be formally evaluated to determine whether these concerns are valid, and if so, to correct existing problems. In this regard, social auditing is a process that evaluates programs to determine their social and economic benefits and limitations. It is a way of measuring the extent to which a program fulfills its stated values and objectives. Social auditing information is collected through various research methods, including surveys, interviews, and case studies.

The purpose of this part is to appropriate funds to the school of social work at the University of Hawaii at Manoa to conduct a social audit of QUEST expanded access.

SECTION 19. (a) The school of social work at the University of Hawaii at Manoa shall conduct a social audit of the QUEST expanded access program.

(b) The social audit shall:

(1) Determine whether the goals of QUEST expanded access are being achieved.

(2) Formulate recommendations if the social audit determines any of the goals of QUEST expanded access have not been achieved.

(c) The dean of the school of social work shall submit a report of the social audit's findings and recommendations to the legislature no later than twenty days prior to the convening of the 2012 regular session.

SECTION 20. There is appropriated out of the general revenues of the State of Hawaii the sum of $200,000 or so much thereof as may be necessary for fiscal year 2011-2012 for the purpose of conducting a social audit of the QUEST expanded access program.

The sum appropriated shall be expended by the University of Hawaii for the purposes of this part.

PART VIII

SECTION 21. Hawaii's health care system consists of a myriad of services that must be coordinated and integrated to ensure access to quality care at the appropriate level for all of Hawaii's residents. An individual often accesses different healthcare providers delivering different products and services,

and may transition from one level of care to another over time. It is important to effectively manage patient transition to facilities providing the appropriate level of care to maintain the availability of services at all levels, more accurately address patient needs, and ensure efficient and cost effective service delivery.

This transition has been particularly difficult between acute care hospitals and long-term care facilities. Often, patients no longer needing hospitalization, but still requiring medical services, are waitlisted for long-term care due to a shortage of available space in long-term care facilities. The unfortunate consequence is a shortage of available space and service delivery at acute care hospitals. Additionally, acute care hospitals are facing a financial crisis due to the manner in which medicaid reimbursements are allocated.

When a medicaid-eligible patient is treated by an acute care hospital, medicaid pays a rate based upon the level of care needed by the patient. When the patient is well enough to be transferred to long-term care, the medicaid reimbursement is reduced to a rate that is twenty to thirty per cent of the actual cost of acute care hospitalization. If the hospital is not able to transfer the patient to long-term care, it must

absorb the financial loss. This creates an unnecessary fiscal burden on acute care hospitals as its cost of care is generally more fixed due to stringent regulatory and quality-control requirements.

At any particular time, a total of about two hundred patients in Hawaii's hospitals are waiting to be transferred to long-term care. Patients with certain conditions have been waitlisted for up to a year. The total loss to hospitals was estimated at $72,500,000 in 2008.

A significant portion of that loss is due to underpayment by medicaid and its contracted health plans. Medicaid is, in effect, a public-private partnership because the public sector provides the funding and the private sector provides the services. Unfortunately, medicaid reimbursements seldom cover the actual cost of provided services, resulting in fiscally weakened health care facilities and instability in the health care system as a whole.

In the past, acute care hospitals were able to absorb medicaid losses using payments from commercial and other payers to offset under-funded medicaid reimbursements. But as the cost of health care has increased, and significant developments in medical technology has required acute care hospitals to increase

its capital investments, even these payments are no longer enough to bridge the fiscal gap. The result for many of these hospitals is financial failure. For example, without annexation by the Hawaii health systems corporation, which is subsidized by the State, Kahuku hospital would have ceased operations due to bankruptcy. Underpayment by medicaid was cited as one of the major reasons for Kahuku hospital's financial difficulties.

Long-term care facilities are also facing financial hardship as a result of inappropriate medical reimbursements. Payments for patients with complex medical conditions requiring additional care should be cost-based rather than acuity-based to address the disparities in the cost of services and service delivery.

The purpose of this part is to provide fair compensation to acute care hospitals for the service they provide to medicaid patients who have been treated for acute illnesses and injuries and who have recovered sufficiently so that they may be transferred to long-term care, but for whom long-term care is not available. In addition, this part provides fair compensation to long-term care facilities for patients with medically complex conditions when their level of care changes from acute to long-term care.

SECTION 22. Chapter 346, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§346- **Medicaid reimbursements.** (a) Reimbursements by medicaid and its contracted health plans to hospitals for patients occupying acute care licensed beds who are on a waitlist for long-term care shall be at least equal to the rate paid for acute care services.

(b) Reimbursements by medicaid and its contracted health plans to facilities with long-term care beds for patients with medically complex conditions who, prior to admission to the facility were receiving acute care services in an acute care hospital, shall be at least equal to the rate paid for subacute care services.

(c) As used in this section:

"Medically complex condition" means a combination of chronic physical conditions, illnesses, or other medically related factors that significantly impact an individual's health and manner of living and cause reliance upon technological, pharmacological, and other therapeutic interventions to sustain life.

"Subacute care" means a level of care that is needed by a patient not requiring acute care, but who needs more intensive skilled nursing care than is provided to the majority of patients in a skilled nursing facility."

SECTION 23. Section 346D-1.5, Hawaii Revised Statutes, is amended to read as follows:

"**§346D-1.5 Medicaid reimbursement equity.** Not later than July 1, 2008, there shall be no distinction between hospital-based and nonhospital-based reimbursement rates for institutionalized long-term care under medicaid. Reimbursement for institutionalized intermediate care facilities and institutionalized skilled nursing facilities shall be based solely on the level of care rather than the location. This section shall not apply to critical access hospitals[~~.~~] or to reimbursements made in accordance with section 346- ."

SECTION 24. There is appropriated out of the general revenues of the State of Hawaii the sum of $ or so much thereof as may be necessary for fiscal year 2011-2012 for increased medicaid reimbursement in accordance with this Act.

The sum appropriated shall be expended by the department of human services for the purposes of this part.

PART IX

SECTION 25. United States healthcare spending in 2009 consumed 17.3 per cent of the gross domestic product which surpassed the rise in the general rate of inflation. Much of the cost of health care is used to treat obesity, diabetes, and heart disease, which are often caused or exacerbated by poor lifestyle choices.

These preventable conditions are increasing. For example, obesity in Hawaii has risen from twelve per cent in 1996 to almost double that amount, twenty-three per cent, in 2009. Poor lifestyle choices, such as high fat diets and lack of exercise, contribute to loss of lifetime expectancy from five to seven years. In addition, poor lifestyle leads to an eighty-two per cent increase in heart disease and a ninety-one per cent increase in diabetes.

Employers can help their employees make better lifestyle choices by establishing wellness programs that seek to maintain and promote good health rather than correct poor health. From the perspective of employers, wellness programs can reduce health care costs, reduce absenteeism, and improve employee retention.

Successful wellness programs provide resources that are convenient to employees, offer them attractive incentives, and

focus on helping them feel better rather than just looking better. Wellness programs provide consistent education about healthy lifestyles and often use social forces present in natural groups at the workplace to encourage them.

Wellness programs at some businesses have resulted in walking clubs at lunchtime. Educational and skills training activities can be promoted in short videos that play during break or lunch times at the work-site locations. Vending machine changes that include healthier choices can be led by an employee workgroup that can involve participation from other associates in choosing items to replace candy and high fat snacks.

The purpose of this part is to encourage businesses to create wellness programs for their employees by creating a tax credit. This tax credit will supplement discounts for health care insurance that will be offered under federal health care reform to businesses with wellness programs.

SECTION 26. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§235- **Wellness program tax credit.** (a) There shall be allowed to any corporate, partnership, or limited liability

company taxpayer a qualified wellness program tax credit that shall be deductible from the taxpayer's net income tax liability imposed by this chapter for the taxable year in which the tax credit is properly claimed.

(b) For the purposes of this section:

"Qualified costs" means the expenses incurred in establishing and developing a qualified wellness program.

"Qualified wellness program" means a program offered by an employer to all employees that includes the following components:

(1) Health awareness, such as health education, preventive screenings, and health risk assessment;

(2) Employee engagement mechanisms that encourage employee participation;

(3) Behavioral change elements that have been proven to help improve unhealthy lifestyles, such as counseling, seminars, on-line programs, and self-help materials; and

(4) A supportive environment, such as creating on-site policies that encourage healthy lifestyles, healthy eating, physical activity, and mental health.

In addition, each employer shall provide evidence that employees have participated in the qualified wellness program.

(c) To qualify for the tax credit, the taxpayer shall be in compliance with all applicable federal, state, and county statutes, rules, and regulations.

(d) The tax credit shall be equal to ten per cent of the qualified costs related to providing qualified wellness programs to employees.

(e) If the tax credit under this section exceeds the taxpayer's net income tax liability, the amount of the excess tax credit over payments due shall be refunded to the eligible taxpayer.

(f) Every claim, including amended claims, for the tax credit under this section shall be filed on or before the end of the twelfth month following the close of the taxable year for which the tax credit may be claimed. Failure to meet the filing requirements of this subsection shall constitute a waiver of the right to claim the tax credit.

(g) No taxpayer shall claim a credit under this chapter for the qualified costs used to properly claim a tax credit under this section for the taxable year.

(h) The director of taxation:

(1) Shall prepare forms as may be necessary to claim the tax credit under this section;

(2) May require the taxpayer to furnish information to ascertain the validity of the claim for the tax credit; and

(3) May adopt rules pursuant to chapter 91 to effectuate the purposes of this section."

PART X

SECTION 27. The legislature finds that it is in the State's best interest to ensure that patients who are waitlisted for long-term care or other types of care receive appropriate medical care by authorizing the department of human services to apply medicaid presumptive eligibility to qualified waitlisted patients. Action based on presumptive eligibility means that the department of human services shall make a preliminary or "presumptive" determination to authorize medical assistance in the interval between application for assistance and the final medicaid eligibility determination based on the likelihood that the applicant will be eligible.

On average, there are at any given time one hundred fifty patients in acute care hospital settings across the State who are waitlisted for long-term care. Waitlisted patients are

those who are deemed medically ready for discharge and are no longer in need of acute care services, but who cannot be discharged due to various barriers, such as delays in medicaid eligibility determinations, and therefore must remain in the higher-cost hospital setting. Discharge timeframes for waitlisted patients range from a few days to over one year. This situation creates a poor quality of life for the patient, presents an often insurmountable dilemma for providers and patients, and causes a serious drain on the financial resources of acute care hospitals, with ripple effects felt throughout other health care service sectors.

Regulatory and government mandates create barriers to transferring waitlisted patients. One such barrier is the delay in completing medicaid eligibility determinations for waitlisted patients. Senate Concurrent Resolution No. 198, adopted by the legislature in 2007, requested the Healthcare Association of Hawaii to conduct a study of patients in acute care hospitals who are waitlisted for long-term care, and to propose solutions to the problem. The following is an excerpt from the resulting 2008 report to the legislature addressing the critical problem of waitlisted patients and the regulatory barrier of medicaid eligibility determinations:

"Hawaii State Medicaid eligibility/re-eligibility determinations:

(a) Presumptive eligibility/re-eligibility: The task force is very concerned about the amount of time it takes to complete the Medicaid eligibility and re-eligibility process. Staff within hospitals, nursing facilities, etc. report spending a significant amount of time assisting families with Medicaid applications, following up with families to ensure their compliance in submitting the required documentation to support the application, hand carrying applications to the Medicaid eligibility office, following up with eligibility workers on the status of applications, etc. They report that hand-carried applications are often misplaced, the time clock for eligibility does not start until the completed application is located within the DHS, family members may be non-compliant in completing the necessary paperwork since the patient is being cared for safely and the facility has no option for discharging the patient, and the providers believe that they have taken on a beneficiary services role of

assisting consumers that should be assumed by DHS. The Medicaid eligibility and re-eligibility application process in Hawaii is obsolete and unable to handle the current volume. It relies on a paper-driven system that receives a high volume of applications per day. Delays in processing applications in a timely manner translates to delays in access to care for Medicaid beneficiaries. Acute care hospitals report that in many cases they have not been able to transfer patients to long term care because the delay in making a determination of Medicaid eligibility resulted in too long a delay in placement in a nursing facility or home and community based setting. By the time the Medicaid eligibility was approved, the bed in the long-term care facility/setting was taken. The direct labor hours involved in following up on the process negatively impact providers across the continuum. Many have hired outside contractors to assist in the application process.

(b) Shifting responsibility for consumer assistance in completing the Medicaid application from the provider

of service to the state department of human services: Providers have taken on the role of consumer services representatives when patients/families need to submit applications for Medicaid eligibility or to reapply for eligibility. Often, providers end up spending hours to days "tracking down" required documentation to include with the Medicaid application and it has become labor intensive. Many have hired external organizations to assist in this process. Delays by patients/families in completing Medicaid applications result in bad debt and charity care incurred by providers and they have no recourse but to hold the family members accountable and/or discharge the patient due to non-payment.

(c) Non-compliance by family members/guardians in completing Medicaid eligibility/re-eligibility applications: In other states (ex: Nevada), legislation has been passed to impose financial penalties on family members/guardians who did not actively participate in completing/submitting documentation for Medicaid eligibility/re-eligibility

determinations when fraudulent activity was suspected."

The purpose of this part is to require the department of human services to provide medicaid presumptive eligibility to patients who have been waitlisted for long-term care.

This part also begins the process of developing a long-term solution to severe problems associated with processing medicaid applications that include extended application processing times and misplaced applications. The existing application process is obsolete because it is paper-based. A computer-based system would be much more efficient. This part requires the department of human services to conduct a study of a computerized medicaid applications system.

SECTION 28. Chapter 346, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§346- Presumptive eligibility under medicaid for waitlisted patients.** (a) The department shall presume that a waitlisted patient applying for medicaid is eligible for coverage; provided that the applicant is able to show:

(1) Proof of an annual income at or below the maximum level allowed under federal law or under a waiver

approved for Hawaii under Title 42 United States Code Section 1396n, as applicable;

(2) Verification of assets;

(3) Confirmation of waitlisted status as certified by a health care provider licensed in Hawaii; and

(4) Proof of meeting the level of care requirement for institutional or home- and community-based long-term care as determined by a physician licensed in Hawaii.

The department shall notify the applicant and the facility of the presumptive eligibility on the date of receipt of the application. The applicant shall submit the remaining documents necessary to qualify for medicaid coverage within ten business days after the applicant's receipt of notification of presumptive eligibility from the department. The department shall notify the applicant of eligibility within five business days of receipt of the completed application for medicaid coverage.

Waitlisted patients who are presumptively covered by medicaid shall be eligible for services and shall be processed for coverage under the State's qualifying medicaid program.

(b) If the waitlisted patient is later determined to be ineligible for medicaid after receiving services during the

period of presumptive eligibility, the department shall disenroll the patient and notify the provider and the plan, if applicable, of disenrollment by facsimile transmission or electronic mail. The department shall provide reimbursement to the provider or the plan for the time during which the waitlisted patient was enrolled."

SECTION 29. The department of human services shall submit a report to the legislature no later than twenty days prior to the convening of the regular sessions of 2012 through 2016, inclusive, of findings and recommendations, including proposed legislation, regarding the costs and other issues related to medicaid presumptive eligibility.

SECTION 30. The department of human services shall conduct a study for a potential computerized system for processing medicaid applications. The study shall consider different alternatives, assess each alternative, and recommend the best alternative. The study shall consider the requirements of Hawaii's medicaid program, the ability of each alternative to meet these requirements, and costs. The department of human services shall submit a report of its findings and recommendations, including proposed legislation, to the

legislature no later than twenty days prior to the convening of the regular session of 2012.

SECTION 31. There is appropriated out of the general revenues of the State of Hawaii the sum of $200,000 or so much thereof as may be necessary for fiscal year 2011-2012 to cover the cost of any reimbursements made to providers or plans for services provided during the time that waitlisted patients are enrolled but eventually determined to be ineligible.

The sum appropriated shall be expended by the department of human services for the purposes of this part.

PART XI

SECTION 32. In our democratic form of government, the legislature is responsible for setting public policy, and the executive branch is responsible for carrying out these policies. Part of the legislature's policymaking role involves holding hearings on bills as a means of receiving input from the public and creating a forum for discussion. The opportunity for the public to have a voice in the creation of public policy is a fundamental principle of democracy.

The department of human services operates the State's medicaid program, expending more than a billion dollars annually for a state program that is second in size only to public

education. However, due to the vagaries of history, the legislature has very little oversight of the medicaid program.

As a result, the department of human services, in effect, sets medicaid policy. Significant changes have been made to Hawaii's medicaid program without any role played by the legislature or the public.

The purpose of this part is to bring more transparency into the operations of Hawaii's medicaid program and to make explicit the legislature's role in setting medicaid policy.

SECTION 33. Chapter 346, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§346- **Medicaid program.** (a) The department shall notify the standing committees of the state senate and state house of representatives with primary responsibility for medicaid issues about any intended change to Hawaii's medicaid program. The notification shall be made in advance of the intended change and no later than sixty days prior to its implementation. The notification shall include the full text of the intended change. For any proposed state plan amendment submitted to the Centers for Medicare and Medicaid Services, the notification shall be made prior to its submission.

(b) The state senate or state house of representatives may hold a hearing on any intended change to the medicaid program or any proposed state plan amendment.

(c) The legislature may by statute prohibit the department from making any intended change to the medicaid program or require the department to withdraw any proposed state plan amendment that has been submitted to the Centers for Medicare and Medicaid Services. In addition, the legislature may by statute require the department to submit a state plan amendment to the Centers for Medicare and Medicaid Services or to make any other change to Hawaii's medicaid program."

PART XII

SECTION 34. The department of health currently licenses home health agencies, but it is using a definition for "home health agency" that is overly restrictive. As a result, some agencies that are providing home health services are not licensed.

"Home health agency" is generally defined as an organization that provides medical care by nurses and other licensed professionals under a physician's direction to people in their own homes. It is differentiated from "home care agency", which provides non-medical care by unlicensed personnel

under the direction of the client to people in their own homes. Home care includes assistance with bathing, preparing meals, and transportation.

The department of health is preparing to license home care agencies pursuant to Act 21, First Special Session Laws of Hawaii 2009, which requires home care agencies to be licensed.

Section 321-11, Hawaii Revised Statutes, authorizes the department of health to license home health agencies, and the department has adopted rules for that purpose. Chapter 97 of Title 11, Hawaii Administrative Rules, defines "home health agency" for the purpose of licensing. According to that definition, a home health agency is one that provides "skilled nursing services and other therapeutic services". The department of health has interpreted that definition to mean that a home health agency provides both skilled nursing services and other therapeutic services. An agency that provides only skilled nursing services or only other therapeutic services is not deemed to be a home health agency subject to licensing by the department. This interpretation puts the public in jeopardy, since there are unlicensed agencies that are providing health care.

The purpose of this part is to statutorily establish an accurate and meaningful definition of "home health agency" and to require the department of health to license these agencies so that all agencies that provide skilled nursing services or other therapeutic services, or both, are licensed.

SECTION 35. Chapter 321, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§321- **Home health agencies; licensing.** (a) All home health agencies shall be licensed by the department to ensure the health, safety, and welfare of clients.

(b) The department shall adopt rules in accordance with chapter 91 that shall:

(1) Protect the health, safety, and civil rights of clients of home health agencies; and

(2) Provide for the licensure of home health agencies.

(c) For purposes of this section:

"Home health agency" means a public or proprietary agency, a private, nonprofit organization, or a subdivision of an agency or organization that is engaged in providing skilled nursing services, other therapeutic services, or both under a physician's direction to clients in the client's residence.

"Home health agency" does not apply to an individual, even when the individual is incorporated as a business, or an unpaid or stipended volunteer."

PART XIII

SECTION 36. In the regular session of 2009, the legislature passed Senate Bill No. 415, S.D. 2, H.D. 1, C.D. 1, which was enacted as Act 21, First Special Session Laws of Hawaii 2009. The purpose of Act 21 is to ensure that home care agencies meet minimum standards when delivering services to clients by requiring these agencies to be licensed. Act 21 designated the department of health as the licensing agency. Since Act 21's enactment, the department has collaborated with home care agencies, consumer advocates, and other stakeholders to draft the administrative rules needed to implement the licensing provisions of Act 21. These draft rules have gone through the State's rulemaking process and have been approved.

The department of health intends that licensing fees charged to home care agencies will cover the administrative costs associated with licensing. However, initial funding is needed to start the licensing process so that fees can be collected. After the first year, licensing fees will cover the administrative costs of licensing.

The purpose of this part is to appropriate funds for staffing and other costs to begin the licensing process for home care agencies.

SECTION 37. There is appropriated out of the general revenues of the State of Hawaii the sum of $ or so much thereof as may be necessary for fiscal year 2011-2012 for staffing and other costs associated with the licensing of home care agencies.

The sum appropriated shall be expended by the department of health for the purposes of this part.

PART XIV

SECTION 38. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 39. This Act shall take effect upon its approval; provided that parts II, III, VII, VIII, X, and XIII of this Act shall take effect on July 1, 2011; provided that parts I and IX shall apply to taxable years beginning after December 31, 2010; and provided further that section 28 shall be repealed on July 1, 2016.

INTRODUCED BY: _____

JAN 24 2011

H.B. NO. 906

Report Title:
Emergency Room Physicians; Health; Health care; Tax Credit; Medicaid; Home Health Agencies; Licensing; Quality Assurance Committee; Prepaid Health Advisory Council; Social Audit; QUEST Expanded Access; Hawaii Health Corp; Notification to Legislature; DOH; Appropriation

Description:
Establishes a tax credit for physicians who provide on-call services to emergency departments; creates the Hawaii health corps program; establishes health care-associated infection reporting requirements; expands definition of "quality assurance committee" to include interdisciplinary quality assurance committees; allows representatives of health care provider organizations to serve on the prepaid health advisory council; Requires rates for medicaid reimbursements to hospitals to be equal to rates for similarly related services; creates a tax credit for certain employers; creates presumptive medicaid eligibility for waitlisted patients; requires notification of intended changes to state medicaid programs; defines "home health agency"; appropriates funds.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.