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## A BILL FOR AN ACT

RELATING TO MEDICAID.

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

1           SECTION 1. The legislature finds that, the United States  
2 Supreme Court has significantly limited the states' ability to  
3 recover full reimbursement in Medicaid third-party-lien cases.  
4 The Supreme Court left the discretion to the states to use  
5 formulas to address the allocation and distribution of proceeds  
6 in these cases. Many states have implemented such formulas to  
7 address this outstanding issue and to clarify what will happen  
8 in settlements in these cases. Section 346-37(h), Hawaii  
9 Revised Statutes, also requires that a reasonable amount be  
10 contributed towards a claimant's attorney's fees and costs,  
11 which results in many disputes as to what is considered a  
12 "reasonable amount".

13           The purpose of this Act is to establish a formula for  
14 calculating the amount to be contributed by the State towards a  
15 claimant's attorney's fees and costs, in lieu of recovering the  
16 full amount as stated in section 346-37(f) and (h), Hawaii  
17 Revised Statutes.

1 SECTION 2. Section 346-37, Hawaii Revised Statutes, is  
2 amended by amending subsection (f) to read as follows:

3 "(f) If liability is found to exist, or if the issue of  
4 third-party liability is settled or compromised without a  
5 finding of liability, regardless of who institutes legal  
6 proceedings or seeks other means of recovering, the department  
7 shall have a right to recover the full amount of the costs of  
8 medical assistance or burial payment made. To aid in the  
9 recovery of the costs the department shall have a first lien in  
10 the full amount of the costs of medical assistance or burial  
11 payment made against the proceeds from all damages awarded in a  
12 suit or settlement. The lien shall attach as provided by  
13 subsection (g). Thirty-three per cent of the total settlement  
14 or, if not specified by a jury, thirty-three per cent of any  
15 judgment or award shall be considered special damages for the  
16 limited purpose of identifying the total amount available to  
17 satisfy the lien."

18 SECTION 3. Section 346-37, Hawaii Revised Statutes, is  
19 amended by amending subsection (h) to read as follows:

20 "(h) The lien shall attach as provided by subsection (g).  
21 If a notice of lien is properly served upon the attorney  
22 representing the claimant as provided in subsection (g), that  
23 attorney shall pay the full amount of the lien, prior to

1 disbursing any of the proceeds of the suit or settlement to the  
2 attorney's client. If a notice of lien is properly served upon  
3 the third person, the third person's agent or attorney, or the  
4 third person's insurance company, as provided in subsection (g),  
5 it shall be the responsibility of the person receiving the  
6 notices to pay the full amount of the lien prior to disbursing  
7 any of the proceeds to the claimant's attorney.

8 ~~[If, after having received timely written notice of any~~  
9 ~~claim or action under subsection (e), the department did not~~  
10 ~~intervene or join in the action or prosecute its own claims or~~  
11 ~~actively participate with claimant or claimant's attorney in the~~  
12 ~~prosecution of claims, or a distribution agreement was not~~  
13 ~~entered into between the parties, then the department shall~~  
14 ~~determine its fair contribution toward attorney fees and costs~~  
15 ~~incurred in the action that shall be a reasonable amount based~~  
16 ~~solely upon legitimate costs and services rendered by the~~  
17 ~~claimant or claimant's attorney in recovering the lien amount.~~  
18 ~~Any dispute regarding the department's determination of its~~  
19 ~~contribution to fees and costs may be submitted to~~  
20 ~~administrative hearing under subsection (i) or a court of~~  
21 ~~competent jurisdiction. The value of services contributed by~~  
22 ~~the claimant and department may be considered in fairly~~  
23 ~~allocating fees and costs between the claimant and department~~

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1 ~~where both contribute to recovering the lien amount.]~~ If the  
2 lien is less than or equal to the special damages amount  
3 specified in subsection (f), thirty-three per cent of the lien  
4 amount will be deducted and considered the State's reasonable  
5 and fair contribution towards the claimant's attorney's fees and  
6 costs unless the State prosecutes its own claim, in which case  
7 it is not required to reduce its lien. If the lien is greater  
8 than this special damages amount, the total settlement shall be  
9 split equally between the State, the claimant, and the  
10 claimant's attorney, after deducting all legitimate costs  
11 incurred by claimant's attorney, in prosecuting claimant's  
12 case."

13 SECTION 4. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15 SECTION 5. This Act shall take effect upon its approval.

16  
17 INTRODUCED BY: Cabrick, Guy  
18 BY REQUEST  
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**Report Title:**

Medicaid

**Description:**

Establishes a formula for calculating the amount to be contributed by the State, towards a claimant's attorney's fees and costs, in lieu of recovering the full amount as stated in section 346-37(f) and (h), Hawaii Revised Statutes.

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

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO MEDICAID.

PURPOSE: The purpose of this Act is to establish a formula for calculating the amount to be contributed by the State, towards a claimant's attorney's fees and costs, in lieu of recovering the full amount as stated in section 346-37(f) and (h), Hawaii Revised Statutes.

MEANS: Amend section 346-37(f) and (h), Hawaii Revised Statutes.

JUSTIFICATION: Currently, section 346-37(f) and (h), Hawaii Revised Statutes, allows the Department of Human Services to have a lien for the full amount of its lien, on the moneys that a Medicaid recipient recovers in a settlement or lawsuit. The United States Supreme Court has stated that recovery can only be made on the moneys recovered for medical expenses (special damages). Establishing a formula would help to resolve the issue as to what amount should be contributed by the State towards a claimant's attorney's fees and costs.

Impact on the public: There will be an impact on the Medicaid recipients who recover moneys in a settlement or lawsuit. However, this formula would be a fair method of balancing the amounts owed to the Department of Human Services with the amount that should be contributed by the State towards a claimant's attorney's fees and costs.

Impact on the department and other agencies: These amendments will assist the Department

of Human Services in its collections of reimbursements for its Medicaid liens.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: None.

OTHER AFFECTED  
AGENCIES: None.

EFFECTIVE DATE: Upon approval.