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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 formulas to  
7 address this outstanding issue and to clarify what will happen  
8 in settlements in these cases. Current Hawaii law requires that  
9 the State contribute a reasonable amount towards a medicaid  
10 claimant's attorney's fees and costs, which results in many  
11 disputes as to what is considered a reasonable amount.

12           The legislature also finds that there is a need to  
13 strengthen the medicaid program's ability to recover moneys to  
14 which it is entitled, as these moneys are used to help sustain  
15 the viability of the medicaid program. The medicaid program has  
16 faced budget cuts, which has resulted in reduced benefits for  
17 all recipients. Recovery of reimbursements helps to reduce the  
18 burden on the program while also ensuring it is available for



1 the community. This Act will enhance the medicaid program's  
2 ability to recover these moneys.

3 The purpose of this Act is to establish a formula for  
4 calculating the amount to be contributed by the State towards a  
5 claimant's attorney's fees and costs, in lieu of recovering the  
6 full amount.

7 This Act also defines the terms "value of damages" and  
8 "medical institution" and clarifies that the lien amount stated  
9 in notices of lien produced by the department of human services  
10 for reimbursement of medicaid benefits paid for a recipient,  
11 shall be presumed to be valid.

12 SECTION 2. Section 346-1, Hawaii Revised Statutes, is  
13 amended by adding two definitions to be appropriately inserted  
14 and to read as follows:

15 "Medical institution" means an institution created for the  
16 practice of medicine that provides long-term care services at a  
17 nursing facility level of care.

18 "Value of damages" for the limited purpose of reimbursing  
19 medicaid for benefits paid out means the total amount that a  
20 medicaid recipient receives from a settlement or what a court or  
21 jury awards to the medicaid recipient."



1 SECTION 3. Section 346-29.5, Hawaii Revised Statutes, is  
2 amended by amending subsection (b) to read as follows:

3 "(b) The department may also place a lien against the real  
4 property of any recipient receiving medical assistance who is an  
5 inpatient in a nursing facility, intermediate care facility for  
6 individuals with intellectual disabilities, or other medical  
7 institution, after a state determination, pursuant to notice and  
8 hearing requirements of chapter 91, that the recipient cannot  
9 reasonably be expected to be discharged from the medical  
10 institution and returned home. The lien amount shall be  
11 presumed to be valid. There is a rebuttable presumption that  
12 the recipient cannot reasonably be expected to be discharged  
13 from the facility and return home if the recipient or a  
14 representative of the recipient declares that there is no intent  
15 to return home or if the recipient has been institutionalized  
16 for six months or longer without a discharge plan.

17 (1) The department may not place a lien on the recipient's  
18 home if the recipient's:

19 (A) Spouse;

20 (B) Minor, blind, or disabled child; or

21 (C) Sibling who has an equity interest in the home

22 and who was residing in the home for a period of



1 at least one year immediately before the date of  
2 the recipient's admission to the medical  
3 institution;

4 is lawfully residing in the home.

5 (2) The department shall not recover funds from the lien  
6 on the recipient's home when:

7 (A) A sibling who was residing in the home for a  
8 period of at least one year immediately before  
9 the date of the recipient's admission to the  
10 medical institution; or

11 (B) A son or daughter who was residing in the  
12 recipient's home for a period of at least two  
13 years immediately before the date of the  
14 recipient's admission to the medical institution,  
15 and who establishes to the satisfaction of the  
16 State that he or she provided care to the  
17 recipient which permitted such recipient to  
18 reside at home rather than in an institution;

19 lawfully resides in the home and has lawfully resided  
20 in the home on a continuous basis since the date of  
21 the recipient's admission to the medical institution.



1 (3) The department also shall not recover funds from the  
2 lien if the recipient has a surviving spouse; or  
3 surviving minor, blind, or disabled child.

4 (4) Any lien imposed with respect to this subsection shall  
5 be dissolved upon the individual's discharge from the  
6 medical institution and return home."

7 SECTION 4. Section 346-37, Hawaii Revised Statutes, is  
8 amended by amending subsections (f), (g), and (h) to read as  
9 follows:

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



1 limited purpose of identifying the total amount available to  
2 satisfy the lien.

3 (g) The lien of the department for reimbursement of costs  
4 of medical assistance or burial payments under subsection (f),  
5 shall attach by a written notice of lien served upon the  
6 claimant's attorney or upon the third person, the third person's  
7 agent, attorney, or insurance company. The method of service  
8 shall be by certified or registered mail, return receipt  
9 requested, or by delivery of the notice of lien personally to  
10 the individuals referred to. Service by certified or registered  
11 mail is complete upon receipt. The notice of lien shall state  
12 the name of the injured, diseased, or deceased person, the  
13 amount of the lien, and the date of the accident or incident  
14 which caused the injuries, disease, or death which necessitated  
15 the department's medical assistance or burial payments. If the  
16 notice of lien is served upon the claimant's attorney, the  
17 notice of lien shall state that the claimant's attorney shall  
18 pay the full amount of the lien from the proceeds of any  
19 judgment, settlement, or compromise based on the incident or  
20 accident. If the notice of lien is served upon the third  
21 person, the third person's agent, attorney, or insurance  
22 company, the notice of lien shall state that the third person



1 shall pay the full amount of the lien prior to disbursing any of  
 2 the proceeds to the claimant or to the claimant's attorney. A  
 3 notice of lien may be amended from time to time until  
 4 extinguished, each amendment taking effect upon proper service.  
 5 The lien amount shall be presumed to be valid.

6 (h) The lien shall attach as provided by subsection (g).  
 7 If a notice of lien is properly served upon the attorney  
 8 representing the claimant as provided in subsection (g), that  
 9 attorney shall pay the full amount of the lien, prior to  
 10 disbursing any of the proceeds of the suit or settlement to the  
 11 attorney's client. If a notice of lien is properly served upon  
 12 the third person, the third person's agent or attorney, or the  
 13 third person's insurance company, as provided in subsection (g),  
 14 it shall be the responsibility of the person receiving the  
 15 notices to pay the full amount of the lien prior to disbursing  
 16 any of the proceeds to the claimant's attorney.

17 ~~[If, after having received timely written notice of any~~  
 18 ~~claim or action under subsection (c), the department did not~~  
 19 ~~intervene or join in the action or prosecute its own claims or~~  
 20 ~~actively participate with claimant or claimant's attorney in the~~  
 21 ~~prosecution of claims, or a distribution agreement was not~~  
 22 ~~entered into between the parties, then the department shall~~



1 ~~determine its fair contribution toward attorney fees and costs~~  
2 ~~incurred in the action that shall be a reasonable amount based~~  
3 ~~solely upon legitimate costs and services rendered by the~~  
4 ~~claimant or claimant's attorney in recovering the lien amount.~~  
5 ~~Any dispute regarding the department's determination of its~~  
6 ~~contribution to fees and costs may be submitted to~~  
7 ~~administrative hearing under subsection (i) or a court of~~  
8 ~~competent jurisdiction. The value of services contributed by~~  
9 ~~the claimant and department may be considered in fairly~~  
10 ~~allocating fees and costs between the claimant and department~~  
11 ~~where both contribute to recovering the lien amount.] If the~~  
12 lien is less than or equal to the special damages amount  
13 specified in subsection (f), thirty-three per cent of the lien  
14 amount will be deducted and considered the State's reasonable  
15 and fair contribution towards the claimant's attorney's fees and  
16 costs unless the State prosecutes its own claim, in which case  
17 it is not required to reduce its lien. If the lien is greater  
18 than the special damages amount specified in subsection (f), the  
19 total settlement shall be split equally among the State, the  
20 claimant, and the claimant's attorney, after deducting all  
21 legitimate costs incurred by claimant's attorney in prosecuting  
22 claimant's case."





1 SECTION 5. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 6. This Act shall take effect upon its approval.



**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. Amends section 346-1, Hawaii Revised Statutes, to define, for the limited purpose of reimbursing Medicaid for benefits paid out, the term "value of damages" as the total amount that a Medicaid recipient receives from a settlement or what a court or jury awards to the Medicaid recipient. Amends section 346-1, Hawaii Revised Statutes, to define the term "medical institution" as being an institution created for the practice of medicine and for caring for patients on a long-term basis. Amends sections 346-29.5(b) and 346-37(g), Hawaii Revised Statutes, to state that the lien amount in the Notice of the Lien sent by the Department of Human Services for reimbursement of Medicaid benefits shall be presumed to be valid. (HB2448 HD1)

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

