
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 However, states may use formulas to address the allocation and
5 distribution of proceeds in these cases. Many states have
6 implemented such formulas to address this issue and to clarify
7 the distribution of settlements in these cases. Section 346-
8 37(h), Hawaii Revised Statutes, requires that a reasonable
9 amount be contributed towards a claimant's attorney's fees and
10 costs. This has resulted in disputes regarding the meaning of a
11 "reasonable amount".

12 The legislature also finds that the medicaid program's
13 ability to recover moneys that it is entitled to must be
14 strengthened to help sustain the viability of the medicaid
15 program. The Medicaid program has had budget cuts that result
16 in reduced benefits for all the recipients. Recovering
17 reimbursements helps to reduce the burden on the program while
18 helping to ensure the program is available for the community.



1 These amendments would enhance the ability to recover these
2 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 SECTION 2. Section 346-1, Hawaii Revised Statutes, is
8 amended by adding a new definition to be appropriately inserted
9 and to read as follows:

10 "Medical institution" means an institution created for the
11 practice of medicine and also provides long-term care services
12 at a nursing facility level of care for the purposes of dealing
13 with medicaid liens in this chapter."

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

16 "(b) The department may also place a lien against the real
17 property of any recipient receiving medical assistance who is an
18 inpatient in a nursing facility, intermediate care facility for
19 individuals with intellectual disabilities, or other medical
20 institution, after a state determination, pursuant to notice and
21 hearing requirements of chapter 91, that the recipient cannot
22 reasonably be expected to be discharged from the medical



1 institution and returned home. The written notice of lien shall
2 be accompanied by an itemized list of payments made by the
3 department, which identifies:

4 (1) The provider of services;

5 (2) The dates of services;

6 (3) The amounts billed and paid; and

7 (4) The dates of payments,

8 and be provided to the person against whom restitution is
9 sought. Absent a good faith basis contesting the amount or
10 validity of a specific line item charge or charges in the lien,
11 the entire lien amount shall be presumed to be valid. There is
12 a rebuttable presumption that the recipient cannot reasonably be
13 expected to be discharged from the facility and return home if
14 the recipient or a representative of the recipient declares that
15 there is no intent to return home or if the recipient has been
16 institutionalized for six months or longer without a discharge
17 plan.

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

20 (A) Spouse;

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



1 (C) Sibling who has an equity interest in the home
2 and who was residing in the home for a period of
3 at least one year immediately before the date of
4 the recipient's admission to the medical
5 institution;
6 is lawfully residing in the home.

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

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

13 (B) A son or daughter who was residing in the
14 recipient's home for a period of at least two
15 years immediately before the date of the
16 recipient's admission to the medical institution,
17 and who establishes to the satisfaction of the
18 State that he or she provided care to the
19 recipient which permitted such recipient to
20 reside at home rather than in an institution;
21 is lawfully resides in the home and has lawfully
22 resided in the home on a continuous basis since



1 the date of the recipient's admission to the
2 medical institution.

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

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

9 SECTION 4. Section 346-37, Hawaii Revised Statutes, is
10 amended as follows:

11 1. By amending subsections (d), (e), (f), (g), (h), and
12 (i) to read:

13 "(d) The department, as to this right of reimbursement,
14 shall also be subrogated to all rights or claims that a claimant
15 has against the third person for [~~all damages~~] medical
16 assistance and burial payments not to exceed the full extent of
17 the costs of medical assistance or burial payment furnished or
18 to be furnished by the department. [~~The department's right to~~
19 ~~full reimbursement of the costs of medical assistance or burial~~
20 ~~payment as a subrogee of a claimant shall not be diminished by~~
21 ~~the recovery of any judgment, settlement, or award of an amount~~

1 ~~less than the value of the original or settled claim as~~
2 ~~perceived or calculated by the claimant or any other person.]~~

3 To enforce its rights, the department may intervene or join
4 in any action or proceeding brought by a claimant against the
5 third person. If the action or proceeding is not commenced
6 within six months after the first day on which medical
7 assistance or burial payment is furnished by the department in
8 connection with the injury, disease, or death involved, the
9 department may institute and prosecute legal proceedings against
10 the third person for the injury, disease, or death, in a state
11 court, either alone (in its own name or in the name of a
12 claimant) or in conjunction with the claimant.

13 (e) An attorney representing a claimant or third person
14 shall make reasonable inquiry as to whether the claimant has
15 received or is receiving from the department medical assistance
16 related to the incident involved in the action. If the
17 claimant, claimant's attorney, or claimant's heirs,
18 representatives, or beneficiaries, or any third person have
19 received from the department actual notice of its right to
20 reimbursement or if they have reason to know that the claimant
21 has received or is receiving from the department medical
22 assistance related to the incident, then the claimant,



1 claimant's attorney, claimant's heirs, representatives, or
2 beneficiaries, or third person or third person's attorney shall
3 give to the department timely written notice of any claim or
4 action against a third person. At any time during the pendency
5 of any claim or action, the claimant, claimant's attorney if
6 represented, claimant's heirs, representatives, or
7 beneficiaries, or third person or third person's attorney may
8 contact the department to ascertain the full amount of the costs
9 of medical assistance or burial payment made, which information
10 shall be provided in a reasonable time by the department. Upon
11 obtaining a judgment or reaching a settlement through
12 negotiation or legal proceedings, but before the release of any
13 award or settlement proceeds to any person:

14 (1) The claimant's attorney or third person or third
15 person's attorney, if the attorney has received actual
16 notice from the department of a lien or if the
17 attorney or third person has reason to know that a
18 lien exists; or

19 (2) The claimant or the claimant's heirs, representatives,
20 or beneficiaries, if not represented by an attorney
21 who has received actual notice of the lien,



1 shall notify the department immediately in order to ascertain
2 and ~~[pay the full amount of the]~~ satisfy the department's right
3 to reimbursement for costs of medical assistance or burial
4 payment made.

5 (f) If liability is found to exist, or if the issue of
6 third-party liability is settled or compromised without a
7 finding of liability, regardless of who institutes legal
8 proceedings or seeks other means of recovering, the department
9 shall have a right to recover up to the full amount of the costs
10 of medical assistance or burial payment made~~[-]~~ from a
11 settlement, award or judgment. To aid in the recovery of the
12 costs, the department shall have a first lien ~~[in]~~ for up to the
13 full amount of the costs of medical assistance or burial payment
14 made against the proceeds from ~~[all]~~ damages ~~[awarded]~~ recovered
15 in a ~~[suit or]~~ settlement[-], award, or judgment. The lien
16 shall attach as provided by subsection (g).

17 (g) The lien of the department for reimbursement of costs
18 of medical assistance or burial payments under subsection (f),
19 shall attach by a written notice of lien served upon the
20 claimant's attorney or upon the third person, the third person's
21 agent, attorney, or insurance company. The method of service
22 shall be by certified or registered mail, return receipt



1 requested, or by delivery of the notice of lien personally to
2 ~~[the]~~ these individuals ~~[referred to-]~~. Service by certified or
3 registered mail is complete upon receipt. The notice of lien
4 shall state the name of the injured, diseased, or deceased
5 person, the amount of the lien, and the date of the accident or
6 incident which caused the injuries, disease, or death which
7 necessitated the department's medical assistance or burial
8 payments. If the notice of lien is served upon the claimant's
9 attorney, the notice of lien shall state that the claimant's
10 attorney shall pay the ~~[full amount of the]~~ lien from the
11 proceeds of any judgment, settlement, or compromise based on the
12 incident or accident~~[-]~~ as provided in this section. If the
13 notice of lien is served upon the third person, or the third
14 person's agent, attorney, or insurance company, the notice of
15 lien shall state that the third person shall pay the ~~[full~~
16 ~~amount of the]~~ lien as provided in this section prior to
17 disbursing any of the proceeds to the claimant or to the
18 claimant's attorney. A notice of lien may be amended from time
19 to time until extinguished, each amendment taking effect upon
20 proper service.

21 When restitution is sought in connection with the
22 sentencing of a third person who has caused injury to a



1 recipient of medical assistance, a written notice of lien and an
2 itemized list of payments made by the department, which
3 identifies:

- 4 (1) The provider of services;
- 5 (2) The dates of services;
- 6 (3) The amounts billed and paid; and
- 7 (4) The dates of payments,

8 shall be provided to the person against whom restitution is
9 sought. Absent a good faith basis contesting the amount or
10 validity of a specific line item charge or charges in the lien,
11 the entire lien amount shall be presumed to be valid in
12 determining the amount of restitution.

13 (h) The lien shall attach as provided by subsection (g).
14 If a notice of lien is properly served upon the attorney
15 representing the claimant as provided in subsection (g), that
16 attorney shall pay the [~~full amount of the~~] lien[~~7~~] as provided
17 in this section, prior to disbursing any of the proceeds of the
18 suit or settlement to the attorney's client. If a notice of
19 lien is properly served upon the third person, the third
20 person's agent or attorney, or the third person's insurance
21 company, as provided in subsection (g), it shall be the
22 responsibility of the person receiving the notices to pay the



1 [full amount of the] lien as provided in this section prior to
2 disbursing any of the proceeds to the claimant's attorney. The
3 lien shall be satisfied from that portion of the settlement,
4 award or judgment allocated or allocable to payments by the
5 department for medical and burial payments. Any allocation by a
6 judge, jury, arbitrator, or similar dispute resolution person or
7 tribunal shall be binding; provided that the department's
8 medical and burial payments are included as part of the case or
9 claims brought by the claimant in any action. Any allocation by
10 the claimant or third party may be considered but is not binding
11 on the department. If there is no allocation, a reasonable
12 allocation shall be determined by agreement, administrative
13 hearing under subsection (i), or a court of competent
14 jurisdiction.

15 If, after having received timely written notice of any
16 claim or action under subsection (e), the department did not
17 intervene or join in the action or prosecute its own claims or
18 actively participate with claimant or claimant's attorney in the
19 prosecution of claims, or a distribution agreement was not
20 entered into between the parties, reimbursement shall be as
21 follows. If the lien is less than or equal to one-third of the
22 settlement, award, or judgment, and there is no allocation by a



1 judge, jury, arbitrator, or similar alternative resolution
2 person or tribunal, then there shall be a rebuttable presumption
3 that the amount of reimbursement due the department is the total
4 payments for medical assistance or burial payments by the
5 department or one-third of the settlement, award, or judgment,
6 whichever is less. Any party challenging this rebuttable
7 presumption shall bear the burden of proof. The department's
8 fair share of claimant's reasonable attorneys' fees and expenses
9 shall be deducted from the department's lien recovery. There
10 shall be a rebuttable presumption that one-third of the
11 department's gross reimbursement amount plus a proportionate
12 share of the general excise tax is a reasonable amount for the
13 department's contribution towards claimant's attorneys' fees and
14 expenses. Any party challenging this rebuttable presumption
15 shall bear the burden of proof.

16 If the department alone prosecutes claims that include its
17 medical assistance or burial payments, it shall not be required
18 to reduce its lien on account of attorneys' fees or expenses, if
19 any, incurred by the claimant or claimant's attorney.

20 If both the claimant's attorney and the department
21 contribute to the recovery of medical assistance or burial
22 payments made by the department, then the [department shall



1 ~~determine its]~~ department's fair contribution toward the
2 claimant's attorney fees and costs incurred [~~in the action that~~]
3 shall be a reasonable amount based solely upon legitimate costs
4 and services rendered by the claimant or claimant's attorney in
5 recovering the lien amount. Any dispute regarding the
6 department's determination of its contribution to claimant's
7 attorney's fees and costs may be submitted to administrative
8 hearing under subsection (i) or a court of competent
9 jurisdiction. The value of services contributed by the claimant
10 and department may be considered in fairly allocating fees and
11 costs between the claimant and department where both contribute
12 to recovering the lien amount.

13 The department's lien, after reduction for its contribution
14 to claimant's attorneys' fees and expenses, shall not exceed
15 one-third of the settlement, award, or judgment. Payment of
16 one-third of the settlement, award, or judgment to the
17 department and two-thirds to the claimant and claimant's
18 attorney shall satisfy the entire lien where the department's
19 lien, after reduction for its contribution to claimant's
20 attorneys' fees and expenses, exceeds one-third of the
21 settlement, award, or judgment. Any claimant who asserts that
22 reimbursement to the department should be less than one-third of



1 the settlement, award, or judgment, under the circumstances of
2 that claim, shall bear the burden of proof.

3 (i) [~~Notwithstanding any other law to the contrary, if~~] If
4 there is a dispute between the claimant, the claimant's agent or
5 the claimant's attorney, and the department concerning the
6 existence of the lien or the amount of the lien, or the amount
7 to be reimbursed, the claimant, the claimant's agent, or the
8 claimant's attorney [~~shall~~] may submit the dispute to a court of
9 competent jurisdiction or request in writing [a] an
10 administrative hearing on the dispute. After receipt by the
11 department of a written request, the department shall conduct an
12 administrative hearing within a reasonable period of time.
13 Chapter 91, including any provisions for judicial review or
14 appeal, shall apply to the hearing. Funds sufficient to fully
15 satisfy the reimbursement rights of the department shall be
16 either retained by the person served with the notice of lien,
17 shall be paid to the department, or otherwise reserved subject
18 to agreement with the department pending [~~its~~] a decision by the
19 court or the department and any subsequent judicial review or
20 appeal.

21 2. By amending subsections (k), (l), and (m) to read:



1 "(k) Any person who is subject to the lien who fails to
2 pay the full amount due under this section to the department for
3 reimbursement of the costs of medical assistance, although able
4 to do so from the proceeds of the suit or settlement, shall be
5 personally liable to the department for any damage proximately
6 caused to the department by such failure.

7 (1) No action taken by the department in connection with
8 the rights under this section shall deny to the claimant the
9 recovery for that portion of the claimant's damages not covered
10 under this section.

11 (m) For purposes of this section:

12 "Claimant" includes an injured or diseased person, the
13 person's guardian, or the personal representative, estate,
14 dependents, or survivors, of the deceased person.

15 "Costs of medical assistance" furnished or to be furnished
16 by the department includes:

17 (1) The value or cost of medical care services provided
18 directly by the department;

19 (2) The amount paid by the department to a provider for
20 medical care services rendered or to be rendered; and

21 (3) The value or cost of medical care services rendered or
22 to be rendered by a provider that has received the



1 equivalent of an insurance benefit, capitation rate,
2 and other fee or like charge paid by the department or
3 by a medical care insurer to provide for medical care
4 services.

5 "Third person" includes any person, business, corporation,
6 partnership, or entity of any kind or nature, including
7 employers and insurance carriers, that is potentially liable to
8 the claimant for any tort, liability, payment, reimbursement, or
9 benefit of any kind or nature by reason of any injury, disease,
10 or death."

11 3. By amending subsection (o) to read:

12 "(o) In third-party liability situations, the medical
13 assistance program of the department shall be fully reimbursed
14 the amount due under this section or funds sufficient to fully
15 reimburse the department the amount due under this section shall
16 be retained by the person served with the notice of lien or
17 otherwise reserved in a manner agreeable to the department
18 before the claimant receives any money from the settlement or
19 award. This section is not intended to restrict or diminish the
20 right of the department to settle or compromise its
21 reimbursement rights under this section for less than the full
22 amount due or enter into any agreement with claimant, claimant's



1 attorney or representative, or other party for the distribution
2 of proceeds from a suit or settlement."

3 SECTION 5. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 6. This Act shall take effect on January 7, 2059.



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. Defines the term "medical institution". Clarifies 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. Effective January 7, 2059. (HB2448 HD2)

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