
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 lien amounts
2 stated in the department of human services' notice of lien have
3 been challenged on numerous occasions in cases where the
4 department is seeking restitution.

5 The purpose of this Act is to clarify that the lien amount
6 stated in notices of lien sent by the department of human
7 services for reimbursement of medicaid benefits shall be presumed
8 to be valid under certain conditions.

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

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



1 When restitution is sought in connection with the
2 sentencing of a third person who has caused injury to a
3 recipient of medical assistance, the department shall provide to
4 the person against whom restitution is sought a written notice
5 of lien and an itemized list of payments that identifies the
6 provider of services, the dates of services, amounts billed,
7 amounts paid, and dates of payments. Absent a good faith basis
8 contesting the amount or validity of a specific line item charge
9 or charges in the lien, the entire amount shall be presumed to
10 be valid in determining the amount of restitution.

11 There is a rebuttable presumption that the recipient cannot
12 reasonably be expected to be discharged from the facility and
13 return home if the recipient or a representative of the
14 recipient declares that there is no intent to return home or if
15 the recipient has been institutionalized for six months or
16 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 3. Section 346-37, Hawaii Revised Statutes, is
8 amended by amending subsection (g) to read as follows:

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



1 notice of lien shall state that the claimant's attorney shall
2 pay the full amount of the lien from the proceeds of any
3 judgment, settlement, or compromise based on the incident or
4 accident. If the notice of lien is served upon the third
5 person, the third person's agent, attorney, or insurance
6 company, the notice of lien shall state that the third person
7 shall pay the full amount of the lien prior to disbursing any of
8 the proceeds to the claimant or to the claimant's attorney. A
9 notice of lien may be amended from time to time until
10 extinguished, each amendment taking effect upon proper service.

11 When restitution is sought in connection with the
12 sentencing of a third person who has caused injury to a
13 recipient of medical assistance, the department shall provide to
14 the person against whom restitution is sought a written notice
15 of lien and an itemized list of payments that identifies the
16 provider of services, the dates of services, amounts billed,
17 amounts paid, and dates of payments. Absent a good faith basis
18 contesting the amount or validity of a specific line item charge
19 or charges in the lien, the entire amount shall be presumed to
20 be valid in determining the amount of restitution."

21 SECTION 4. New statutory material is underscored.

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



Report Title:

Medicaid; Reimbursements

Description:

Amends sections 346-29.5(b) and 346-37(g), Hawaii Revised Statutes, to state that the department of human services shall submit a written notice of lien and an itemized list of payments so as to provide sufficient information regarding its payments to the person being sentenced. Considers the entire amount valid in determining the amount of restitution unless contested or unless a specific line item charge or charges in the lien are contested on a good faith basis. (SD1)

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