



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-SIXTH LEGISLATURE, 2012**

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**ON THE FOLLOWING MEASURE:**  
H.B. NO. 2448, H.D. 1 RELATING TO MEDICAID.

**BEFORE THE:**  
HOUSE COMMITTEE ON JUDICIARY

**DATE:** Friday, February 10, 2012 **TIME:** 2:00 p.m.  
**LOCATION:** State Capitol, Room 325  
**TESTIFIER(S):** David M. Louie, Attorney General, or  
Elton Au, or Michael Vincent, Deputy Attorneys General

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Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General strongly supports this measure.

The purpose of this bill is to assist the Department of Human Services in recovering moneys owed by third parties responsible for injuries to Medicaid recipients.

One of the primary purposes of this bill is to establish formulas for calculating the amount to be contributed by the Department of Human Services (DHS) towards a Medicaid recipient's attorney's fees and costs, in lieu of recovering the full amount of a Medicaid lien as currently stated in section 346-37(f) and (h), Hawaii Revised Statutes (HRS). Another primary purpose of this bill is to clarify that the lien amounts stated in notices of lien sent by the Department of Human Services are presumed valid provided certain information are provided to the parties. Other minor amendments are intended to help clarify terms for purposes of pursuing reimbursement for medical expenses.

Currently, section 346-37(f) allows DHS to recover the full amount of the costs of medical assistance made on behalf of a Medicaid recipient, from any moneys that the recipient receives from a lawsuit or settlement. However, the United States Supreme Court has significantly limited the states' ability to recover full reimbursement in Medicaid third-party-lien

cases by limiting state Medicaid agencies to recover only from moneys that a recipient receives that represent medical expenses or special damages. Because settlement moneys are usually for general damages only, recipients and their attorneys dispute the amount of the settlement moneys that should go towards reimbursing medical expenses or special damages. The Court also encouraged the states to come up with a formula by stating "we leave open the possibility that such rules and procedures might be employed to meet concerns about settlement manipulation." Establishing a formula would help to resolve the issue as to how much of the total settlement moneys that a Medicaid recipient receives would be considered available for the limited purpose of medical expenses.

Currently, section 346-37(h) requires that the full amount of the Medicaid lien be paid before the recipient can receive any portion of the settlement moneys. This section also provides that DHS shall determine a "reasonable amount" to be contributed towards a recipient's attorney's fees and costs. This creates many disputes as to what is considered a "reasonable amount." This bill would help resolve this issue by establishing another formula as to how much should be deducted from the Medicaid lien to be considered DHS' contribution towards a recipient's attorney's fees and costs.

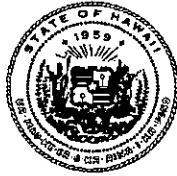
After consulting with the Hawaii Association for Justice on suitable wording, we would like to submit a proposed H.D.2. The suggested amendments are attached. We believe that these suggested amendments will resolve the disputes and establish a fair and equitable balance of the competing interests of the DHS and Medicaid recipients.

Moneys recovered from third parties responsible for injuring Medicaid recipients are used to help sustain the viability of the Medicaid program. The Medicaid program has been facing budget cuts, which result in reduced benefits for all the recipients. Recovering

reimbursements helps reduce the burden on the program while helping to ensure that the Medicaid program continues to be available for the community.

We respectfully request passage of this bill with the suggested amendments.

NEIL ABERCROMBIE  
GOVERNOR



PATRICIA MCMANAMAN  
DIRECTOR

STATE OF HAWAII  
**DEPARTMENT OF HUMAN SERVICES**

P. O. Box 339  
Honolulu, Hawaii 96809-0339

February 10, 2012

TO: The Honorable Gilbert S.C. Keith-Agaran, Chair  
House Committee on Judiciary

FROM: Patricia McManaman, Director

SUBJECT: **H.B. 2448, H.D.1 - RELATING MEDICAID**

Hearing: Friday, February 10, 2012; 2:00 p.m.  
Conference Room 329, State Capitol

**PURPOSE:** The purpose of the bill is to: 1) 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; 2) 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; 3) 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; and 4) 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..

**DEPARTMENT'S POSITION:** The Department of Human Services (DHS) strongly supports this Administration bill. The amendments proposed in this bill will assist the Department of Human Services in its collections of reimbursements for its Medicaid liens.

Section 2 of this bill proposes to define in Section 346-1, Hawaii Revised Statutes (HRS), "medical institution" and "value of damages." Section 346-29.5, Hawaii Revised Statutes, allows Medicaid liens to be placed on the real property of Medicaid recipients who are in a "medical institution." This bill will define that a medical institution is any facility that engages in the practice of medicine and also provides long-term care services at a nursing facility level of care. By clarifying what types of institutions would fall within the statute, DHS will be able to determine whether or not a lien may be properly placed on the recipient's real property.

The valuation of damages that a Medicaid recipient incurs can be vague. Recipients frequently argue that the value is actually the amount that a provider charges, which is usually significantly more than the actual amount that Medicaid has paid on a recipient's behalf. The result is that recipients claim that the settlement amount they received is a small percentage of what the damages are and often argue that the Medicaid lien should be reduced by the same percentage.

Section 3 of this bill amends section 346-29.5(b), HRS, 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. The lien amounts stated in the DHS' Notices of Lien have been challenged on numerous occasions in cases where the Department is seeking restitution. The proposed amendments in Section 3 would reduce the need for a court hearing to prove the amount of the lien and expedite the determination of the amount of restitution that must be paid.

Section 4 of this bill amends section 346-37 (f), (g) , and (h) to also establish the validity of the lien notice and 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), HRS. This formula proposed for the State's contribution towards a claimant's attorney's fees and costs 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. 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.

The DHS defers to the Department of the Attorney General regarding the technical aspects of this bill.

Thank you for the opportunity to testify on this bill.

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO H.B. NO. 2448 H.D. 1**

Date: Friday, February 10, 2012

Time: 2:00 am

To: Chairman Gilbert Keith-Agaran and Members of the House Committee on Judiciary:

My name is Robert Toyofuku and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in OPPOSITION to H.B. No. 2448 HD1, relating to Medicaid.

We have met and conferred with the Department of the Attorney General and have agreed to a consensus draft of an HD 2, which is attached for your consideration. It is our understanding that the Department of the Attorney General is submitting a similar request for consideration of the attached draft HD 2.

Our objections to the current HD1 are as follows.

Current law dictated by the United States Supreme Court ruling in Arkansas Dept. of Health and Human Services v. Ahlborn, decided in 2005, provides that when a person is injured and Medicaid has paid for medical bills related to those injuries, Medicaid should be reimbursed its fair share only from that portion of a recovery that represents medical expenses. The U. S. Supreme Court ruled that federal law : **“does not authorize the State to demand reimbursement from portions of the settlement allocated or allocable to nonmedical damages; instead, it gives the State priority disbursement from the medical expenses portion alone.”**

This bill sets an arbitrary amount of 33% of any settlement, judgment or award, if not specified by a jury, as special damages “available to satisfy the lien.” This violates

the U. S. Supreme Court's decision that the Medicaid lien can only apply to the settlement or judgment's "medical expenses portion alone."

In addition, this bill purports to make all "special damages" subject to the Medicaid lien for medical expenses. Special damages include such things as medical expenses, lost wages, out-of-pocket expenses, and services not covered by Medicare. The U. S. Supreme Court decision made it clear that this is not allowed: "Medicaid recipients must, as a condition of eligibility, assign the State any rights to payment for medical care from any third-party, **not rights to payment for, for example, lost wages.**"

The U. S. Supreme Court decision addressed methods for determining the proper allocation for medical expenses, stating that an allocation can be made by "agreement to an allocation or, if necessary, by submitting the matter to a court for decision."

Accordingly, the new language added on page 2, lines 13 – 17, of the bill should be deleted and replaced with the following:

"The lien shall attach to that portion of the settlement, award or judgment allocated or allocable to payments by the department for medical expenses. If the settlement, award or judgment does not include an allocation for medical expenses, a reasonable allocation shall be determined by agreement or by submission to any court of competent jurisdiction."

Finally, the bill proposes a formula to determine Medicaid's net reimbursement, after considering attorney's fees and expenses, which similarly fail to comply with the U. S. Supreme Court decision and which eliminates its obligation to assume its fair share where both the department and claimant's attorneys contribute to a recovery. The current statute provides: "The value of services contributed by the claimant and department may be considered in fairly allocating fees and costs between the claimant and department



where both contribute to recovering the lien amount.” This language should be retained to fairly cover the situation where both contribute to a recovery. The proposed language on page 4, lines 1 – 12, should be deleted and replaced with the following to comply with the U. S. Supreme Court decision:

“The lien shall apply to that portion of the settlement, award or judgment allocated or allocable to medical expenses paid by the department. The department shall be reimbursed its lien, less 33% for the claimant’s attorney’s fees plus a proportionate share of costs and expenses, where the claimant alone prosecutes the claim. There shall be no reduction for the claimant’s attorney’s fees and expenses where the department alone prosecutes the claim. The value of services contributed by the claimant and department may be considered in fairly allocating fees and expenses between the claimant and department where both contribute to recovering the lien amount. Any dispute regarding the department’s fair share of attorney’s fees, costs and expenses may be submitted to any court of competent jurisdiction.”

In addition, the current HD1 now includes a presumption that the amount stated in the Notice of Lien prepared by Medicaid shall be presumed valid and correct. HAJ objects to this presumption.

Current law provides that when a person is injured and Medicaid has paid for medical bills related to those injuries; Medicaid should be reimbursed its fair share from a recovery against the person who wrongfully caused the injury. The current practice is for Medicaid to send a Notice of Lien which states the amount of medical bills Medicaid has paid from the time of the injury to the time of the recovery. The Notice of Lien might or might not be accompanied by a separate itemized listing of payments made by Medicaid. This bill would make the amount claimed in the Notice of Lien presumed to be valid.

There are major problems with presuming that the amount claimed in the Notice of Lien is valid. First, the Notice of Lien itself contains only the amount claimed and

does not contain any itemization of the payments included in that amount. The basic rule of due process is that a person who claims money from you must prove that the amount claimed is valid. No one would accept a monthly credit card bill that only states the total due without itemizing each charge so errors or fraudulent charges can be discovered and corrected. Yet this is exactly what this bill proposes.

Second, Medicaid typically takes the date of an injury and then claims all medical expenses paid after that date. As a result, payments made for medical services that are not related to the case are often incorrectly included in the lien. For example, a person may injure their neck in an automobile accident and receive treatment from a doctor and physical therapist. Charges for these treatments should be included. But if that person also had pre-existing diabetes, charges for diabetes treatment should not be included. The processing of lien notices is handled by clerks who do not necessarily possess the medical knowledge to know which payments are for injury related expenses and which are not related to the case. The Notice of Lien actually recognizes this and states: "To ensure an accurate lien, please notify us of potential unrelated charges immediately." This bill would now presume that these unrelated charges are valid.

We have had situations where a person was in an automobile accident and Medicaid paid some of his medical bills. Over a year later he hurt his shoulder while swimming which had nothing to do with his accident. Medicaid included the swimming expenses with the automobile expenses. When contacted, Medicaid recognized the error and deleted those charges. This is how it currently works and how it should remain. The incorrect lien amount should not be presumed valid.

There are often processing and clerical errors made in computing Medicaid liens. Sometimes payments for the wrong person are included, such as charges for other family members like siblings or even unrelated persons with similar names or case numbers. We had a case where Medicaid overcharged the patient \$10,850.00 because it had duplicate entries of the same charges. When it was contacted and the duplicate charges (which appear to be a simple clerical error) pointed out Medicaid deleted those charges from the lien. This is the current process that allows the lien amount to be corrected for errors. This bill would require that the lien amount be presumed valid even if it is wrong by over \$10,000. That is not fair and simply does not comply with due process requirements.

Sometimes related charges are not included because they have been missed or are still in processing. The latest indication is that Medicaid is about three to four months behind in processing charges and is unable to provide accurate information that is current. No lien should be presumed valid unless and until accurate information is provided to substantiate the amounts claimed.

The Medicaid lien can be placed against real property of the recipient and sold to satisfy the lien. Medicaid can also hold up distribution of funds when settlements are obtained. Certainly it is not asking too much to require that Medicaid provide an itemization of amounts it claims and receive reimbursement only for those payments actually related to the injury claim involved; and provide the patient an opportunity to correct errors and delete unrelated charges that should not be included in the lien. It is unreasonable to simply presume that any amount stated by Medicaid in its Notice of Lien is valid and correct.

Thank you very much for allowing me to testify in OPPOSITION to this measure.

Please feel free to contact me should you have any questions or desire additional information.

H.B. NO. 2448  
Proposed H.D. 2.

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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 legislature also finds that there is a need to  
14 strengthen the opportunity for Medicaid to recover moneys that  
15 it is entitled to as these moneys are used to help sustain the  
16 viability of the Medicaid program. The Medicaid program has

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1 been facing budget cuts, which result in reduced benefits for  
2 all the recipients. Recovering reimbursements helps to reduce  
3 the burden on the program while helping to ensure it is  
4 available for the community. These amendments would enhance the  
5 ability to recover these moneys.

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

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

15 SECTION 2. Section 346-1, Hawaii Revised Statutes, is  
16 amended by adding two new definitions to be appropriately  
17 inserted and to read as follows:

18 "Medical institution" means, for the purposes of dealing  
19 with Medicaid liens in this chapter, an institution created for  
20 the practice of medicine and also provides long-term care  
21 services at a nursing facility level of care.

22 "Value of damages" for the limited purpose of reimbursing  
23 Medicaid for benefits paid out means the total amount that a

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1 Medicaid recipient receives from a settlement or what a court or  
2 jury awards to the Medicaid recipient."

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

5 "(b) The department may also place a lien against the real  
6 property of any recipient receiving medical assistance who is an  
7 inpatient in a nursing facility, intermediate care facility for  
8 individuals with intellectual disabilities, or other medical  
9 institution, after a state determination, pursuant to notice and  
10 hearing requirements of chapter 91, that the recipient cannot  
11 reasonably be expected to be discharged from the medical  
12 institution and returned home. The written notice of lien shall  
13 be accompanied by an itemized list of payments made by the  
14 department, which identifies the provider of services, dates of  
15 services, amounts billed, amounts paid and dates of payments  
16 shall be provided to the person against whom restitution is  
17 sought. Absent a good faith basis contesting the amount or  
18 validity of a specific line item charge or charges in the lien,  
19 the entire lien amount shall be presumed to be valid. There is  
20 a rebuttable presumption that the recipient cannot reasonably be  
21 expected to be discharged from the facility and return home if  
22 the recipient or a representative of the recipient declares that  
23 there is no intent to return home or if the recipient has been

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1 institutionalized for six months or longer without a discharge  
2 plan.

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

5 (A) Spouse;

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

7 (C) Sibling who has an equity interest in the home  
8 and who was residing in the home for a period of  
9 at least one year immediately before the date of  
10 the recipient's admission to the medical  
11 institution;

12 is lawfully residing in the home.

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

15 (A) A sibling who was residing in the home for a  
16 period of at least one year immediately before  
17 the date of the recipient's admission to the  
18 medical institution; or

19 (B) A son or daughter who was residing in the  
20 recipient's home for a period of at least two  
21 years immediately before the date of the  
22 recipient's admission to the medical institution,  
23 and who establishes to the satisfaction of the



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1 State that he or she provided care to the  
2 recipient which permitted such recipient to  
3 reside at home rather than in an institution;  
4 lawfully resides in the home and has lawfully  
5 resided in the home on a continuous basis since  
6 the date of the recipient's admission to the  
7 medical institution.

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

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

14 SECTION 4. Section 346-37, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 **"§346-37 Recovery of payments and costs of medical**  
17 **assistance.** (a) If a recipient under this chapter dies leaving  
18 an estate and does not have a surviving spouse, child, father,  
19 mother, grandfather, grandmother, grandchild, stepfather,  
20 stepmother, or any designated heir, the department shall have a  
21 valid claim against the estate for the amount of social services  
22 overpayments, financial assistance overpayments, or burial  
23 payments granted. The department shall file a claim against the

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1 estate of a deceased recipient of medical assistance for the  
2 amount of medical assistance granted, only if the recipient was  
3 age fifty-five or over when such medical assistance was received  
4 and there is no surviving spouse, or surviving child who is  
5 under twenty-one years of age, or blind, or disabled. The  
6 department shall file a claim against the estate of a recipient  
7 of medical assistance who was an inpatient in a nursing  
8 facility, intermediate care facility for individuals with  
9 intellectual disabilities, or other medical institution only if  
10 there is no surviving spouse or surviving child who is under  
11 twenty-one years of age, or blind, or disabled.

12 (b) If any portion of any public assistance, including  
13 medical assistance, food stamps, or burial payment, was obtained  
14 by any fraudulent device, including but not limited to those  
15 under section 346-34, or if any public assistance, including  
16 medical assistance, food stamps, or burial payment, was  
17 furnished or provided after receipt of income or resources which  
18 were not reported to the department as required by this chapter  
19 or by the department, the department may file a claim against  
20 the estate of the deceased recipient notwithstanding subsection  
21 (a).

22 (c) If the department has provided medical assistance or  
23 burial payment to a person who was injured, suffered a disease,

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1 or died under circumstances creating a tort or other liability  
2 or payment obligation against a third person, the department  
3 shall have a right to recover from the third person an amount  
4 not to exceed the full amount of the costs of medical assistance  
5 or burial payment furnished or to be furnished by the  
6 department.

7 (d) The department, as to this right of reimbursement,  
8 shall also be subrogated to all rights or claims that a claimant  
9 has against the third person for ~~[all damages]~~ medical  
10 assistance and burial payments not to exceed the full extent of  
11 the costs of medical assistance or burial payment furnished or  
12 to be furnished by the department. ~~[The department's right to~~  
13 ~~full reimbursement of the costs of medical assistance or burial~~  
14 ~~payment as a subrogee of a claimant shall not be diminished by~~  
15 ~~the recovery of any judgment, settlement, or award of an amount~~  
16 ~~less than the value of the original or settled claim as~~  
17 ~~perceived or calculated by the claimant or any other person.]~~

18 To enforce its rights, the department may intervene or join  
19 in any action or proceeding brought by a claimant against the  
20 third person. If the action or proceeding is not commenced  
21 within six months after the first day on which medical  
22 assistance or burial payment is furnished by the department in  
23 connection with the injury, disease, or death involved, the

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1 department may institute and prosecute legal proceedings against  
2 the third person for the injury, disease, or death, in a state  
3 court, either alone (in its own name or in the name of a  
4 claimant) or in conjunction with the claimant.

5 (e) An attorney representing a claimant or third person  
6 shall make reasonable inquiry as to whether the claimant has  
7 received or is receiving from the department medical assistance  
8 related to the incident involved in the action. If the  
9 claimant, claimant's attorney, or claimant's heirs,  
10 representatives, or beneficiaries, or any third person have  
11 received from the department actual notice of its right to  
12 reimbursement or if they have reason to know that the claimant  
13 has received or is receiving from the department medical  
14 assistance related to the incident, then the claimant,  
15 claimant's attorney, claimant's heirs, representatives, or  
16 beneficiaries, or third person or third person's attorney shall  
17 give to the department timely written notice of any claim or  
18 action against a third person. At any time during the pendency  
19 of any claim or action, the claimant, claimant's attorney if  
20 represented, claimant's heirs, representatives, or  
21 beneficiaries, or third person or third person's attorney may  
22 contact the department to ascertain the full amount of the costs  
23 of medical assistance or burial payment made, which information

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1 shall be provided in a reasonable time by the department. Upon  
2 obtaining a judgment or reaching a settlement through  
3 negotiation or legal proceedings, but before the release of any  
4 award or settlement proceeds to any person:

5 (1) The claimant's attorney or third person or third  
6 person's attorney, if the attorney has received actual  
7 notice from the department of a lien or if the  
8 attorney or third person has reason to know that a  
9 lien exists; or

10 (2) The claimant or the claimant's heirs, representatives,  
11 or beneficiaries, if not represented by an attorney  
12 who has received actual notice of the lien, shall  
13 notify the department immediately in order to  
14 ascertain and ~~[pay the full amount of the]~~ satisfy the  
15 department's right to reimbursement for costs of  
16 medical assistance or burial payment made.

17 (f) If liability is found to exist, or if the issue of  
18 third-party liability is settled or compromised without a  
19 finding of liability, regardless of who institutes legal  
20 proceedings or seeks other means of recovering, the department  
21 shall have a right to recover up to the full amount of the costs  
22 of medical assistance or burial payment made~~[.]~~ from a  
23 settlement, award or judgment. To aid in the recovery of the

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1 costs the department shall have a first lien ~~[is]~~ for up to the  
2 full amount of the costs of medical assistance or burial payment  
3 made against the proceeds from ~~[all]~~ damages ~~[awarded]~~ recovered  
4 in a ~~[suit or]~~ settlement [.], award or judgment. The lien shall  
5 attach as provided by subsection (g).

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

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1 is served upon the third person, the third person's agent,  
2 attorney, or insurance company, the notice of lien shall state  
3 that the third person shall pay the ~~[full amount of the]~~ lien as  
4 provided in this section prior to disbursing any of the proceeds  
5 to the claimant or to the claimant's attorney. A notice of lien  
6 may be amended from time to time until extinguished, each  
7 amendment taking effect upon proper service. When restitution  
8 is sought in connection with the sentencing of a third person  
9 who has caused injury to a recipient of medical assistance, a  
10 written notice of lien and an itemized list of payments made by  
11 the department, which identifies the provider of services, dates  
12 of services, amounts billed, amounts paid, and dates of payments  
13 shall be provided to the person against whom restitution is  
14 sought. Absent a good faith basis contesting the amount or  
15 validity of a specific line item charge or charges in the lien,  
16 the entire lien amount shall be presumed to be valid in  
17 determining the amount of restitution.

18 (h) The lien shall attach as provided by subsection (g).  
19 If a notice of lien is properly served upon the attorney  
20 representing the claimant as provided in subsection (g), that  
21 attorney shall pay the ~~[full amount of the]~~ lien[, ] as provided  
22 in this section, prior to disbursing any of the proceeds of the  
23 suit or settlement to the attorney's client. If a notice of

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

19 If, after having received timely written notice of any  
20 claim or action under subsection (e), the department did not  
21 intervene or join in the action or prosecute its own claims or  
22 actively participate with claimant or claimant's attorney in the  
23 prosecution of claims, or a distribution agreement was not



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1 entered into between the parties, reimbursement shall be as  
2 follows. If the lien is less than or equal to one-third of the  
3 settlement, award, or judgment, and there is no allocation by a  
4 judge, jury, arbitrator, or similar alternative resolution  
5 person or tribunal, then there shall be a rebuttable presumption  
6 that the amount of reimbursement due the department is the total  
7 payments for medical assistance or burial payments by the  
8 department or one-third of the settlement, award, or judgment,  
9 whichever is less. Any party challenging this rebuttable  
10 presumption shall bear the burden of proof. The department's  
11 fair share of claimant's reasonable attorneys' fees and expenses  
12 shall be deducted from the department's lien recovery. There  
13 shall be a rebuttable presumption that one-third of the  
14 department's gross reimbursement amount plus a proportionate  
15 share of the general excise tax is a reasonable amount for the  
16 department's contribution towards claimant's attorneys' fees and  
17 expenses. Any party challenging this rebuttable presumption  
18 shall bear the burden of proof.

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

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

16        The department's lien, after reduction for its contribution  
17 to claimant's attorneys' fees and expenses, shall not exceed  
18 one-third of the settlement, award, or judgment. Payment of  
19 one-third of the settlement, award, or judgment to the  
20 department and two-thirds to the claimant and claimant's  
21 attorney shall satisfy the entire lien where the department's  
22 lien, after reduction for its contribution to claimant's  
23 attorneys' fees and expenses, exceeds one-third of the

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1 settlement, award, or judgment. Any claimant who asserts that  
2 reimbursement to the department should be less than one-third of  
3 the settlement, award, or judgment, under the circumstances of  
4 that claim, shall bear the burden of proof.

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

22 (j) Upon the recovery of any claim as provided in this  
23 section, the amount recovered shall be paid into the treasury of

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1 the State, and if the amount for which claim was paid was in  
2 part from federal funds, the proper portion thereof shall be  
3 paid by the director of finance into the treasury of the United  
4 States, and the director of finance shall report the payment to  
5 the department.

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

12 (l) No action taken by the department in connection with  
13 the rights under this section shall deny to the claimant the  
14 recovery for that portion of the claimant's damages not covered  
15 under this section.

16 (m) For purposes of this section:

17 "Claimant" includes an injured or diseased person, the  
18 person's guardian, or the personal representative, estate,  
19 dependents, or survivors, of the deceased person.

20 "Costs of medical assistance" furnished or to be furnished  
21 by the department includes:

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

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- 1           (2) The amount paid by the department to a provider for  
2           medical care services rendered or to be rendered; and  
3           (3) The value or cost of medical care services rendered or  
4           to be rendered by a provider that has received the  
5           equivalent of an insurance benefit, capitation rate,  
6           and other fee or like charge paid by the department or  
7           by a medical care insurer to provide for medical care  
8           services.

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

15          (n) The department may agree with a provider or medical  
16          care insurer for the provision of medical care services or  
17          medical assistance to any claimant, and the agreement may  
18          provide for the department to be the exclusive entity authorized  
19          to recover all costs of medical assistance rendered to a  
20          claimant. The department may recover all costs through the use  
21          of the lien procedures established by this section.

22          (o) In third-party liability situations, the medical  
23          assistance program of the department shall be fully reimbursed

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1 the amount due under this section or funds sufficient to fully  
2 reimburse the department the amount due under this section shall  
3 be retained by the person served with the notice of lien or  
4 otherwise reserved in a manner agreeable to the department  
5 before the claimant receives any money from the settlement or  
6 award. This section is not intended to restrict or diminish the  
7 right of the department to settle or compromise its  
8 reimbursement rights under this section for less than the full  
9 amount due or enter into any agreement with claimant, claimant's  
10 attorney or representative, or other party for the distribution  
11 of proceeds from a suit or settlement.

12 SECTION 5. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

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

15

16 INTRODUCED BY: \_\_\_\_\_

17

BY REQUEST

18

# H.B. NO. 2448

**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, 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; and amends sections 346-29.5(b) and 346-37(g), Hawaii Revised Statutes, to state that the lien amount in the Notice of Lien sent by the Department of Human Services for reimbursement of Medicaid benefits shall be presumed to be valid.

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

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A BILL FOR AN ACT

RELATING TO MEDICAID.

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

SECTION 1. The legislature finds that the United States Supreme Court has significantly limited the states' ability to recover full reimbursement in medicaid third-party-lien cases. The Supreme Court left the discretion to the states to use formulas to address the allocation and distribution of proceeds in these cases. Many states have implemented formulas to address this outstanding issue and to clarify what will happen in settlements in these cases. Current Hawaii law requires that the State contribute a reasonable amount towards a medicaid claimant's attorney's fees and costs, which results in many disputes as to what is considered a reasonable amount.

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

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.

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

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

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



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

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

"(b) The department may also place a lien against the real property of any recipient receiving medical assistance who is an inpatient in a nursing facility, intermediate care facility for individuals with intellectual disabilities, or other medical institution, after a state determination, pursuant to notice and hearing requirements of chapter 91, that the recipient cannot reasonably be expected to be discharged from the medical institution and returned home. The written notice of lien shall be accompanied by an itemized list of payments made by the department which identifies the provider of services, dates of services, amounts billed, amounts paid and dates of payments. Absent a good faith basis contesting the amount or validity of a specific line item charge or charges in the lien, the entire lien amount shall be presumed to be valid. There is a rebuttable presumption that the recipient cannot reasonably be expected to be discharged from the facility and return home if the recipient or a representative of the recipient declares that there is no intent to return home or if the recipient has been institutionalized for six months or longer without a discharge plan.

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

(A) Spouse;

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

(C) Sibling who has an equity interest in the home and who was residing in the home for a period of at least one year immediately before the date of the recipient's admission to the medical institution;

is lawfully residing in the home.

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

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

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

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

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

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

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

**§346-37 Recovery of payments and costs of medical assistance.** (a) If a recipient under this chapter dies leaving an estate and does not have a surviving spouse, child, father, mother, grandfather, grandmother, grandchild, stepfather, stepmother, or any designated heir, the department shall have a valid claim against the estate for the amount of social services overpayments, financial assistance overpayments, or burial payments granted. The department shall file a claim against the estate of a deceased recipient of medical assistance for the amount of medical assistance granted, only if the recipient was age fifty-five or over when such medical assistance was received and there is no surviving spouse, or surviving child who is under twenty-one years of age, or blind, or disabled. The department shall file a claim against the estate of a recipient of medical assistance who was an inpatient in a nursing facility, intermediate care facility for individuals with intellectual disabilities, or other medical institution only if there is no surviving spouse or surviving child who is under twenty-one years of age, or blind, or disabled.

(b) If any portion of any public assistance, including medical assistance, food stamps, or burial payment, was obtained by any fraudulent device, including but not limited to those under section 346-34, or if any public assistance, including medical assistance, food stamps, or burial payment, was furnished or provided after receipt of income or resources which were not reported to the department as required by this chapter or by the department, the department may file a claim against the estate of the deceased recipient notwithstanding subsection (a).

(c) If the department has provided medical assistance or burial payment to a person who was injured, suffered a disease, or died under circumstances creating a tort or other liability or payment obligation against a third person, the department shall have a right to recover from the third person an amount not to exceed the full amount of the costs of medical assistance or burial payment furnished or to be furnished by the department.

(d) The department, as to this right of reimbursement, shall also be subrogated to all rights or claims that a claimant has against the third person for ~~[all damages]~~ medical assistance and burial payments not to exceed the full extent of the costs of medical assistance or burial payment furnished or to be furnished by the department. ~~[The department's right to full reimbursement of the costs of medical assistance or burial payment as a subrogee of a claimant shall not be diminished by the recovery of any~~

~~judgment, settlement, or award of an amount less than the value of the original or settled claim as perceived or calculated by the claimant or any other person.]~~

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

(e) An attorney representing a claimant or third person shall make reasonable inquiry as to whether the claimant has received or is receiving from the department medical assistance related to the incident involved in the action. If the claimant, claimant's attorney, or claimant's heirs, representatives, or beneficiaries, or any third person have received from the department actual notice of its right to reimbursement or if they have reason to know that the claimant has received or is receiving from the department medical assistance related to the incident, then the claimant, claimant's attorney, claimant's heirs, representatives, or beneficiaries, or third person or third person's attorney shall give to the department timely written notice of any claim or action against a third person. At any time during the pendency of any claim or action, the claimant, claimant's attorney if represented, claimant's heirs, representatives, or beneficiaries, or third person or third person's attorney may contact the department to ascertain the full amount of the costs of medical assistance or burial payment made, which information shall be provided in a reasonable time by the department. Upon obtaining a judgment or reaching a settlement through negotiation or legal proceedings, but before the release of any award or settlement proceeds to any person:

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

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

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

(f) If liability is found to exist, or if the issue of third-party liability is settled or compromised without a finding of liability, regardless of who institutes legal proceedings or seeks other means of recovering, the department shall have a right to recover up to the full amount of the costs of medical assistance or burial payment made from a settlement, award or judgment. To aid in the recovery of the costs the department shall have a first lien ~~[is]~~ for up to the full amount of the costs of medical assistance or burial payment

made against the proceeds from ~~all~~ damages ~~awarded~~ recovered in a ~~suit or~~ settlement, award or judgment. The lien shall attach as provided by subsection (g).

(g) The lien of the department for reimbursement of costs of medical assistance or burial payments under subsection (f), shall attach by a written notice of lien served upon the claimant's attorney or upon the third person, the third person's agent, attorney, or insurance company. The method of service shall be by certified or registered mail, return receipt requested, or by delivery of the notice of lien personally to the individuals referred to. Service by certified or registered mail is complete upon receipt. The notice of lien shall state the name of the injured, diseased, or deceased person, the amount of the lien, and the date of the accident or incident which caused the injuries, disease, or death which necessitated the department's medical assistance or burial payments. If the notice of lien is served upon the claimant's attorney, the notice of lien shall state that the claimant's attorney shall pay the ~~full amount of the~~ lien from the proceeds of any judgment, settlement, or compromise based on the incident or accident as provided in this section. If the notice of lien is served upon the third person, the third person's agent, attorney, or insurance company, the notice of lien shall state that the third person shall pay the ~~full amount of the~~ lien as provided in this section prior to disbursing any of the proceeds to the claimant or to the claimant's attorney. A notice of lien may be amended from time to time until extinguished, each amendment taking effect upon proper service. When restitution is sought in connection with the sentencing of a third person who has caused injury to a recipient of medical assistance, a written notice of lien and an itemized list of payments made by the department which identifies the provider of services, dates of services, amounts billed, amounts paid and dates of payments shall be provided to the person against whom restitution is sought. Absent a good faith basis contesting the amount or validity of a specific line item charge or charges in the lien, the entire lien amount shall be presumed to be valid in determining the amount of restitution.

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

The lien shall be satisfied from that portion of the settlement, award or judgment allocated or allocable to payments by the department for medical and burial payments. Any allocation by a judge, jury, arbitrator or similar dispute resolution person or tribunal shall be binding; provided that the department's medical and burial payments are included as part of the case or claims brought by the claimant in any action. Any allocation by the claimant or third party may be considered but is not binding on the department. If there is no allocation, a reasonable allocation shall be determined by agreement, administrative hearing under subsection (i), or a court of competent jurisdiction.

If, after having received timely written notice of any claim or action under subsection (e), the department did not intervene or join in the action or prosecute its own claims or actively participate with claimant or claimant's attorney in the prosecution of claims, or a distribution agreement was not entered into between the parties, reimbursement shall be as follows. If the lien is less than or equal to one-third of the settlement, award or judgment, and there is no allocation by a judge, jury, arbitrator or similar alternative resolution person or tribunal, then there shall be a rebuttable presumption that the amount of reimbursement due the department is the total payments for medical assistance or burial payments by the department or one-third of the settlement, award, or judgment, whichever is less. Any party challenging this rebuttable presumption shall bear the burden of proof. The Department's fair share of claimant's reasonable attorneys' fees and expenses shall be deducted from the department's lien recovery. There shall be a rebuttable presumption that one-third of the department's gross reimbursement amount plus a proportionate share of the general excise tax is a reasonable amount for the department's contribution towards claimant's attorneys' fees and expenses. Any party challenging this rebuttable presumption shall bear the burden of proof.

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

If both the claimant's attorney and the department contribute to the recovery of medical assistance or burial payments made by the department, then the department's [shall determine its] fair contribution toward the claimant's attorney fees and costs incurred [in the action that] shall be a reasonable amount based solely upon legitimate costs and services rendered by the claimant or claimant's attorney in recovering the lien amount. Any dispute regarding the department's determination of its contribution to claimant's attorney's fees and costs may be submitted to administrative hearing under subsection (i) or a court of competent jurisdiction. The value of services contributed by the claimant and department may be considered in fairly allocating fees and costs between the claimant and department where both contribute to recovering the lien amount.

The department's lien, after reduction for its contribution to claimant's attorneys' fees and expenses, shall not exceed one-third of the settlement, award or judgment. Payment of one-third of the settlement, award or judgment to the department and two-thirds to the claimant and claimant's attorney shall satisfy the entire lien where the department's lien, after reduction for its contribution to claimant's attorneys' fees and expenses, exceeds one-third of the settlement, award or judgment. Any claimant who asserts that reimbursement to the department should be less than one-third of the settlement, award or judgment, under the circumstances of that claim, shall bear the burden of proof.

(i) ~~[Notwithstanding any other law to the contrary, i]~~ If there is a dispute between the claimant, the claimant's agent or the claimant's attorney, and the department concerning the existence of the lien or the amount of the lien, or the amount to be reimbursed, the

claimant, the claimant's agent, or the claimant's attorney ~~[shall]~~ may submit the dispute to a court of competent jurisdiction or request in writing an administrative hearing on the dispute. After receipt by the department of a written request, the department shall conduct an administrative hearing within a reasonable period of time. Chapter 91, including any provisions for judicial review or appeal, shall apply to the hearing. Funds sufficient to fully satisfy the reimbursement rights of the department shall be either retained by the person served with the notice of lien, shall be paid to the department, or otherwise reserved subject to agreement with the department pending [its] a decision by the court or the department and any subsequent judicial review or appeal.

(j) Upon the recovery of any claim as provided in this section, the amount recovered shall be paid into the treasury of the State, and if the amount for which claim was paid was in part from federal funds, the proper portion thereof shall be paid by the director of finance into the treasury of the United States, and the director of finance shall report the payment to the department.

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

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

(m) For purposes of this section:

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

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

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

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

(3) The value or cost of medical care services rendered or to be rendered by a provider that has received the equivalent of an insurance benefit, capitation rate, and other fee or like charge paid by the department or by a medical care insurer to provide for medical care services.

"Third person" includes any person, business, corporation, partnership, or entity of any kind or nature, including employers and insurance carriers, that is potentially liable to

the claimant for any tort, liability, payment, reimbursement, or benefit of any kind or nature by reason of any injury, disease, or death.

(n) The department may agree with a provider or medical care insurer for the provision of medical care services or medical assistance to any claimant, and the agreement may provide for the department to be the exclusive entity authorized to recover all costs of medical assistance rendered to a claimant. The department may recover all costs through the use of the lien procedures established by this section.

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

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

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