

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES

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

March 29, 2012

TO: The Honorable David Y. Ige, Chair
Senate Committee on Ways and Means

FROM: Patricia McManaman, Director

SUBJECT: **H.B. 2448, H.D.2, S.D. 1 - RELATING MEDICAID**

Hearing: Thursday, March 29, 2012; 9: a.m.
Conference Room 211, State Capitol

PURPOSE: The purposes of this bill are to: 1) amend section 346-1, Hawaii Revised Statutes (HRS), 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; 2) amend Sections 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; and 3) amending various sections of 346-37, HRS, 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 and to clarify that amount that a Medicaid recipient, who receives from a settlement or what a court or jury awards to the Medicaid recipient at trial, must reimburse Medicaid for benefits paid out.

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), the term “medical institution.” 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, the DHS will be able to determine whether or not a lien may be properly placed on the recipient's real property.

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 include an itemized list of payments made by the Department and presumes the lien to be valid absent a good faith basis contesting the amount. 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 (d), (e), (f), (g), (h), and (i) 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), HRS, allows the

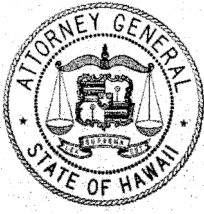
Department of Human Services to have a lien for the full amount of its lien, on the moneys that a Medicaid recipient recovers in a settlement or lawsuit. The United States Supreme Court has stated that recovery can only be made on the moneys recovered for medical expenses (special damages). Establishing 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.

Section 4 which amends section 346-37 (k), (l), (m) and (o) would also clarify the amount that a Medicaid recipient, who receives from a settlement or what a court or jury awards to the Medicaid recipient at trial, must reimburse Medicaid for benefits paid out. This will improve Medicaid program integrity and to ensure that funding for the Medicaid program is used to provide health insurance coverage for those who really need it.

The DHS requests that the effective date of this bill be changed to upon approval. In FY 2011, \$2.3 million was recovered from third party liens. This bill will help in increasing these recoveries.

The DHS defers to the Department of the Attorney General regarding the technical aspects or amendments needed for this bill.

Thank you for the opportunity to testify on this bill.



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

**TO THE SENATE COMMITTEE ON WAYS AND MEANS ON THE FOLLOWING MEASURE:
H.B. NO. 2448, H.D. 2, S.D. 1, RELATING TO MEDICAID.**

HEARING DATE: Thursday, March 29, 2012

TIME: 9:00 a.m.

LOCATION: State Capitol, Room 211

WRITTEN COMMENTS ONLY. For more information, call Elton Au, or Michael Vincent, Deputy Attorneys General, at 586-1317.

Chair Ige and Members of the Committee:

The Department of the Attorney General continues to strongly support this measure, as detailed in our prior testimony. We would also like to point out that there is a typographical error on page 4 of the bill. On line 21, the word "is" should be deleted since it is not a part of the original statute.