

NEIL ABERCROMBIE
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February 24, 2012

TO: The Honorable Marcus R. Oshiro, Chair
House Committee on Finance

FROM: Patricia McManaman, Director

SUBJECT: **H.B. 2189, H.D.1 - RELATING TO MEDICAID**

Hearing: Friday, February 24, 2012; 3:30 p.m.
Conference Room 308, State Capitol

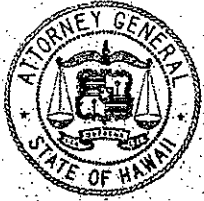
PURPOSE: The purpose of this bill is to require medicaid home and community-based waiver programs to allow family members hired and directed by the waiver program individual to provide specific approved in-home care services to the individual.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) respectfully opposes this bill as the provisions for family members to provide care for family members is already included in the State's approved waiver.

DHS has already included the definition of "family members" allowed to provide services for their family member in its Centers for Medicare and Medicaid Services (CMS) approved Medicaid waiver documents. The "family members," as stated in this bill, are currently able to provide and be paid for the care provided to eligible Medicaid recipients under the QUEST Expanded Access (QExA) and the Developmentally Disabled/Intellectually Disabled Home & Community Based waiver programs.

While not specifically defined, family members are already included in statute in Section 346D-4(2), Hawaii Revised Statutes, under "Individual Providers." These providers are hired and directed by the waiver program individual to provide services and therefore duplicative and unnecessary.

Thank you for the opportunity to testify on this measure.



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

ON THE FOLLOWING MEASURE:
H.B. NO. 2448, H.D. 2, RELATING TO MEDICAID.

BEFORE THE:
HOUSE COMMITTEE ON FINANCE

DATE: Friday, February 24, 2012 **TIME:** 3:30 p.m.
LOCATION: State Capitol, Room 308
TESTIFIER(S): David M. Louie, Attorney General, or
Elton Au, or Michael Vincent, Deputy Attorneys General

Chair Oshiro 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, when certain information is provided to the parties. Other minor amendments are intended to help pursue reimbursement for medical expenses.

Currently, section 346-37(f), HRS, 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), HRS, 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, we believe that this bill will resolve the disputes and establish a fair and equitable balance of the competing interests of the DHS and Medicaid recipients.

We are also requesting that the term "value of damages" be reinserted into the bill and defined for the limited purpose of reimbursing Medicaid for benefits paid out, as "the total amount that a Medicaid recipient receives from a settlement or what a court or jury awards to the Medicaid recipient at trial". This definition was included in the proposed revisions that were agreed to by the Hawaii Association for Justice, but were removed in House Draft 2.

The valuation of damages that a Medicaid recipient incurs can be vague. In many cases the recipients and their attorneys argue that the value of damages 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. These situations significantly reduce the amount of money that is recovered for reimbursing the Department of Human Services for its lien, resulting in the loss of potential reimbursements to the State.

Medicaid recipients have already benefitted from the Medicaid program by receiving free, or greatly discounted medical care. Additionally, the amount that Medicaid pays the provider of the medical service is about twenty-five to thirty-three percent of what the provider

charges for the medical service, thereby giving the recipients a significant benefit.

Complementing this is the fact that under federal law, medical providers are precluded from seeking the unpaid balance from any settlement or award, thereby giving the recipients a further benefit.

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 results 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.

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII
ASSOCIATION FOR JUSTICE (HAJ) IN SUPPORT OF H.B. NO. 2448 H.D. 2**

Date: Friday, February 24, 2012
Time: 3:30 pm

To: Chairman Marcus Oshiro and Members of the House Committee on Finance:

My name is Robert Toyofuku and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in SUPPORT of H.B. No. 2448 HD2, relating to Medicaid.

The current Hawaii statute is invalid under the United States Supreme Court ruling in Arkansas Dept. of Health and Human Services v. Ahlborn, decided in 2005. 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 brings the Hawaii statute in compliance with the U. S. Supreme Court's decision.

This bill is necessary because it is just a matter of time before the current statute is challenged and declared invalid by the courts. This could result in an extended period of time when the State will not be able to obtain any reimbursement until corrective legislation can be enacted.

This measure currently contains a defective effective date which I assume will be corrected in a final version if the bill moves forward.

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

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