



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

ON THE FOLLOWING MEASURE:
S.B. NO. 2712, H.D. 1 RELATING TO MEDICAID.

BEFORE THE:
HOUSE COMMITTEE ON JUDICIARY

DATE: Wednesday, March 21, 2012 **TIME:** 2:15 p.m.
LOCATION: State Capitol, Room 325
TESTIFIER(S): David M. Louie, Attorney General, or
Elton Au, or Michael Vincent, Deputy Attorneys General

Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General strongly supports the first two sections of this measure.

The purpose of section two of this bill is to define the term "medical institution" as being an institution created for the practice of medicine, which also provides long-term care services at a nursing facility level of care.

The term "medical institution" can be vague. The term is used in section 346-29.5, Hawaii Revised Statutes, to determine if a Medicaid lien may be properly placed upon the real property of a Medicaid recipient, after the recipient enters a "medical institution." If the recipient enters a "medical institution," the Department of Human Services is allowed to place a lien upon the real property of the Medicaid recipient to potentially recover the payments made for the recipient's care. Some recipients, however, could argue that the facility they are living in is not a medical institution, in order to prevent the Department of Human Services from putting a lien on their real property. This bill would help to clarify that a "medical institution" is any facility that includes the practice of medicine and also provides long-term care services at a nursing facility level of care.

We defer to the Department of Human Services as to sections three through six, which were added by the prior committee.

NEIL ABERCROMBIE
GOVERNOR



PATRICIA McMANAMAN
DIRECTOR
BARBARA A. YAMASHITA
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES

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

March 21, 2012

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

FROM: Patricia McManaman, Director

SUBJECT: **S.B. 2712, H.D. 1 - RELATING TO MEDICAID**

Hearing: Wednesday, March 21, 2012; 2:15 p.m.
Conference Room 325, State Capitol

PURPOSE: The purposes of this bill are: Part I - to amend 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; Part II to require the DHS to collaborate with various providers to revise the methodology for determining the level of acuity for Medicaid nursing home residents and setting reimbursement rates and work with the Department of Health to develop a referral and discharge plan based on acuity levels; Part III – to mandate a non-emergency transportation services study, and Part IV – to require prior notice from Medicaid to health care providers when changing reimbursement policies and guidelines, and prohibits retroactive changes to previously approved Medicaid reimbursements.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) strongly supports Part I of this bill which is the original intent of this Administration bill. DHS opposes Parts II and IV of this bill. We defer to the Department of Transportation regarding Part III of this bill.

DHS strongly supports Part I of this bill which would define 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, DHS will be able to determine whether or not a lien may be properly placed on the recipient's real property. This will assist the Department of Human Services in its collections of reimbursements for its Medicaid liens. The DHS defers to the Department of the Attorney General regarding the technical aspects of Part I of this bill.

Part II of this bill which would require the DHS to collaborate with various providers to revise the methodology for determining the level of acuity for Medicaid nursing home residents and setting reimbursement rates and working with the Department of Health to develop a referral and discharge plan based on acuity levels.

Medicaid already reimburses nursing facilities on an acuity basis. Those facilities that care for more complex patients receive higher reimbursement. The acuity determination methodology is based on data reported by nursing facilities to the Centers for Medicare & Medicaid Services (CMS) and utilizes a CMS adopted methodology for calculating acuity. If the nursing facility providers in Hawaii would like to modify this methodology, DHS would be willing to work with them.

With the implementation of QUEST Expanded Access (QExA) in February, 2009, the plans have been able to assess and move patients from an acute care hospital to appropriate home and community-based services when ready for discharge. The QExA plans have been instrumental in diverting individuals requiring long term care services into more cost-effective and less restrictive home and community-based services.

DHS opposes Part IV of this bill which would require prior notice from Medicaid to health care providers when changing reimbursement policies and guidelines, and prohibits retroactive changes to previously approved Medicaid reimbursements because it is unnecessary. The QUEST and QExA plans currently provide adequate notification to providers of upcoming changes in reimbursements and policies. This provision, while reasonable, is a contractual issue between the providers and the health plans. It is a provision that could instead be included in future MQD contracts rather than mandated through statute.

Thank you for the opportunity to testify on this bill.