



STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES

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

March 29, 2012

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

FROM: Patricia McManaman, Director

SUBJECT: **S.B. 2713, S.D.1, H.D. 2 - RELATING TO MEDICAID**

Hearing: Thursday, March 29, 2012; 11:00 a.m.
Conference Room 308, State Capitol

PURPOSE: The purposes of this bill are: Part 1 - to amend sections 346-29.5(b) and 346-37(g), Hawaii Revised Statutes, to state that the lien amount in the Notice of Lien shall be presumed to be valid; and Part II – to delay loss of license upon departure of last Medicaid client and lower the substitute caregiver minimum age from twenty-one years to eighteen years for community care foster family homes.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) strongly supports Part I of this bill which is original intent of this Administration bill. DHS strongly opposes Part II of this bill and recommends that Part II be deleted in its entirety.

DHS strongly supports Part I of this bill proposing to amend sections 346-29.5(b) and 346-37(g), Hawaii Revised Statutes, which will help in Medicaid lien recovery efforts. The lien amounts stated in the DHS' Notices of Lien have been challenged on numerous occasions in cases where the Department is seeking restitution. This bill would reduce the need for a court hearing to prove the amount of the lien. These amendments 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 on the technical aspects of Part I of this bill.

DHS strongly opposes Part II of this bill which would allow community care foster family homes (CCFFHs) six months to find another Medicaid client upon the departure of their current Medicaid client and reduce the age for substitute caregivers in CCFFHs caring for three residents from twenty-one years and older to eighteen years and older.

Section 4 of Part II which would amend §346-332, HRS, to allow CCFFHs at least six months to find a Medicaid client when their only Medicaid client has departed the home is unnecessary. To date, there have been no CCFFH closures as a result of the home not having a Medicaid client in residence. The CCFFH operator is given information on how to contact the various case management agencies to obtain Medicaid client referrals. As long as the CCFFH operator can document a good faith effort to locate a suitable Medicaid client in a timely manner, the CCFFH will not be closed or cited as having violated home certification requirements. We have, in fact, extended licenses in excess of one year when the circumstances so warranted.

In addition, requiring a physician to certify that the removal of a private-pay client may cause the client to sustain transfer trauma is not necessary and will create additional work for the CCFFH operator, case managers, and physicians.

The DHS recommends that §346-332, HRS, be repealed in its entirety because the demonstration project referred to in subsection (a) is no longer in existence and the term "community care foster family home" is already defined in §346-331, HRS, as a home providing twenty-four-hour living accommodations, including personal care and homemaker services, for not more than two adults at any one time, at least one of

whom shall be a Medicaid recipient. This means that the CCFFH is required to have a Medicaid recipient in residence at any given time.

Section 5 of Part II would amend §346-334(b), HRS, to lower the substitute caregiver requirement age for CCFFH. The substitute caregiver must assume all of the duties and responsibilities of the primary caregiver when the primary caregiver, who is required to be at least age twenty-one, is absent from the home. The workload involved in providing care and supervision for three residents who are at the nursing facility level of care increases at least 50% when compared with the care and supervision of only two residents in the home. The additional tasks and responsibilities associated with caring for three residents require that the caregiver possess the experience and maturity to complete the necessary tasks in a competent manner. Therefore, the minimum age of twenty-one should remain as the standard for both the primary caregiver as well as for all substitute caregivers.

Thank you for the opportunity to testify on this bill.



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

ON THE FOLLOWING MEASURE:

S.B. NO. 2713, S.D. 1, H.D. 2, RELATING TO MEDICAID.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Thursday, March 29, 2012 **TIME:** 11:00 a.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 the first three sections of this measure.

The purposes of sections two and three of this bill are to clarify 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.

The entire amount stated in the Department of Human Services' notice of lien has increasingly been challenged in cases where the Department of Human Services is seeking restitution for medical payments for a Medicaid recipient who was injured by a criminal defendant. Whenever there is a question about a particular charge on the lien, the Department will research all the questioned charges and verify each charge's validity. The verification is done by contacting the provider of the medical service and confirming that its charges are related to the injury paid for by Medicaid.

It has now become common practice, however, for defense attorneys in restitution cases to question the entire amount, only to withdraw their objection and accept the charges after the Department has proven them. This verification is expensive and time consuming. This bill creates a presumption that for restitution cases, the entire lien amount is valid unless a challenge is presented to specific charges of the lien amount.

We defer to the Department of Human Services as to the remaining sections.