

SB 2713

Measure Title: RELATING TO MEDICAID.
Report Title: Medicaid; Reimbursements
Description: 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.
Companion: HB2451
Package: Gov
Current Referral: HMS
Introducer(s): TSUTSUI (BR)

NEIL ABERCROMBIE
GOVERNOR



PATRICIA MCMANAMAN
DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809-0339

February 2, 2012

TO: The Honorable Suzanne Chun Oakland, Chair
Senate Committee on Human Services

FROM: Patricia McManaman, Director

SUBJECT: **S.B. 2713 - RELATING TO MEDICAID**

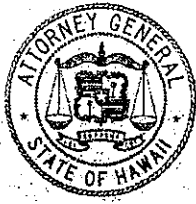
Hearing: Thursday, February 2, 2012; 1:15 p.m.
Conference Room 016, State Capitol

PURPOSE: The purpose of the bill is 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 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 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 this bill.

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, RELATING TO MEDICAID.

BEFORE THE:
SENATE COMMITTEE ON HUMAN SERVICES

DATE: Thursday, February 2, 2012 **TIME:** 1:15 p.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): David M. Louie, Attorney General, or
Elton Au, or Michael Vincent, Deputy Attorneys General

Chair Chun Oakland and Members of the Committee:

The Department of the Attorney General strongly supports this measure.

The purpose of this bill is 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 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 the entire lien amount is valid unless a challenge is presented to specific charges of the lien amount.

We respectfully request passage of this bill.

**TESTIMONY OF BERT SAKUDA ON BEHALF OF THE HAWAII
ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO S.B. NO. 2713**

Date: Thursday, February 2, 2012

Time: 1:15 pm

To: Chairperson Suzanne Chun Oakland and Members of the Senate Committee on
Human Services:

My name is Bert Sakuda and I am presenting this testimony on behalf of the
Hawaii Association for Justice (HAJ) in OPPOSITION to S.B. No. 2713, relating to
Medicaid.

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. A sample
copy is attached. 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.

Attached is an example 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. We contacted Medicaid and pointed out the error to them and Medicaid deleted those charges. Attached is written confirmation from Medicaid that it made an "adjustment" to the lien and deleted \$685.20 in unrelated charges. This is how it should work. The incorrect lien amount should not be presumed valid.

Third, 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 have a case where Medicaid overcharged the patient \$10,850.00 because it had duplicate entries of the same charges. We contacted Medicaid and pointed out the duplicate charges (which appear to be a simple clerical error) and Medicaid deleted those charges from the lien. Attached is written confirmation from Medicaid showing the \$10,850.00 error: "Adjusted off service – duplicate entry." 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.

STATE OF HAWAII DEPARTMENT OF HUMAN SERVICES—NOTICE OF LIEN

To: Cronin, Fried, Sekiya, Kekina & Fairbanks Attorney at Law, A Law Corporation 841 Bishop Street Davies Pacific Center, Suite 600 Honolulu, HI 96813-3962	Claimant: Date of Accident: Lien Amount: \$175,077.55
---	---

Your Insured:

Pursuant to the provisions of Section 346-37, Hawaii Revised Statutes, NOTICE is hereby given that the Department of Human Services has made medical assistance and/or burial payments on behalf of the above identified Claimant for the amounts shown above for injuries, disease, or death sustained as a result of an accident or incident that occurred on the above-referenced date. By virtue of said statute, said amounts constitute lien(s) in favor of the State upon the proceeds awarded in suit or settlement of any cause of action arising from the accident or incident which caused the injury, disease, or death, for which the Department has made payments. Disbursement of funds to any of the above identified claimants, their representatives, heirs, executors, administrators, successors, or assigns without the consent of the State of Hawaii will subject you to liability to the State for all claims the State may have against any of the named claimants, their representatives, heirs, executors, administrators, successors, assigns, or any third person pursuant to Section 346-37, HRS.

Pursuant to the above-cited statute, you are required to pay the full amount of the lien stated herein prior to disbursing any of the proceeds of any judgment, settlement, or compromise based on the accident or incident stated above, to the Claimant, or Claimant's attorney.

Pursuant to the above-cited statute, 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, you are required to notify the Department of Human Services to ascertain and pay the full amount of the costs of medical assistance or burial payment made.

Please allow 5-10 working days to process any lien update. Lien updates will not include unpaid bills.

To ensure an accurate lien, please notify us of potential unrelated charges immediately.

Check(s) should be made payable to the **Department of Human Services** and sent to ACS Hawaii Medicaid, TPL Recovery Unit, PO Box 1480, Honolulu, HI 96806-1480.

Dated, Honolulu, Hawaii: December 22, 2011

ACS Hawaii Medicaid,

Violeta Cabrerros

Casualty Clerk

IMPORTANT NOTICE TO INSURERS AND OTHER INTERESTED PARTIES

Re: Confidentiality in Third Party Liability Recoveries

Sections 346-10 and 346-11, Hawaii Revised Statutes provide that information you receive from the Department of Human Services concerning welfare and Medicaid recipients is confidential. Any person who intentionally divulges this information, other than as authorized by law, may be guilty of a violation.

The exchange of information between insurers, other interested parties, and the State to determine liability to the Medicaid program, is permitted. Recipient information may be used for determining the amount of payment due to the Medicaid Program and for making payment. It may also be used to compile statistical reports in which individual beneficiaries are not identified. It is necessary to check facts, such as dates of employment with a third party, the beneficiary should not be identified as a "welfare" or "Medicaid" recipient. DHS Form 1125 (09/02)

Case Name:

DHS Payments: 0.00
Adjustments / Reimbursements: 685.20

Previous Lien Amount: 4/5/2011 6,085.28
New Lien Amount: 4/15/2011 5,400.08

Previous Billed Amount: 19,278.04
New Billed Amount: -1,867.27
Total Billed Amount: 17,410.77

AMENDED

Provider	Date of Service	Amount Billed	DHS Paid / Process		Adjusted Off
			Date	Amount	

ADJUSTMENT

KAPIOLANI MEDICAL CENTER	12/16/2009	-435.00			291.17
PAUL J. EAKIN	12/6/2010	-240.00			75.48
KAPIOLANI MEDICAL CENTER	12/6/2010	-1164.00			310.12
ROBERT M. DIMAURO	12/6/2010	-28.27			8.43

Case Name: _____

DHS Payments: 11,125.54
Adjustments / Reimbursements: 5,694.20

Previous Lien Amount: 10/18/2011 169,646.21
New Lien Amount: 8/9/2011 175,077.55

Previous Billed Amount: 147,456.00
New Billed Amount: 14,178.00
Total Billed Amount: 161,634.00

AMENDED

Provider	Date of Service	Amount Billed	DHS Paid / Process		Adjusted Off
			Date	Amount	

DHS PAYMENTS MADE BY OHANA- QUEST

Adjusted off service- duplicate entry

GARDEN ISLE HEALTHCARE	01/01-01/31/201	-10,850.00			5,694.20
WILCOX MEM. HOSPITAL	8/14/2011	1,290.00	N/A	50.00	
KAUAI MEDICAL HOSPITAL	8/14/2011	374.00	N/A	15.00	
ALLEN JOHNSON	8/14/2011	24.00	N/A	9.73	
GARDEN ISLE HEALTHCARE	08/01-08/17/11	6,224.00	N/A	2,212.96	
GARDEN ISLE HEALTHCARE	08/18-08/31/11	5,446.00	N/A	3,372.05	
GARDEN ISLE HEALTHCARE	09/01-09/30/11	11,670.00	N/A	5,465.80	

NOTE: THIS IS AN INTERIM LIEN. PLEASE CONTACT MAUREEN SAPIENZA AT THE ATTORNEY GENERAL'S OFFICE (808) 586-1305 FOR A FINAL UPDATE.

ChunOakland2 - Tyrell

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, January 29, 2012 12:06 PM
To: HMS Testimony
Cc: robertscottwall@yahoo.com
Subject: Testimony for SB2713 on 2/2/2012 1:15:00 PM

Testimony for HMS 2/2/2012 1:15:00 PM SB2713

Conference room: 016
Testifier position: Support
Testifier will be present: Yes
Submitted by: Scott Wall
Organization: Individual
E-mail: robertscottwall@yahoo.com
Submitted on: 1/29/2012

Comments: