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## HOUSE CONCURRENT RESOLUTION

REQUESTING THE DEPARTMENT OF HUMAN SERVICES TO STUDY THE RIGHTS AND DUE PROCESS REQUIREMENTS REGARDING COMPLAINTS, GRIEVANCES, AND APPEALS ACROSS CARE SETTINGS FOR MEDICAID NURSING FACILITY LEVEL OF CARE CLIENTS WHO RECEIVE HOME AND COMMUNITY BASED SERVICES.

1           WHEREAS, effective February 1, 2009, Medicaid members who  
2 were 65 years or older or of any age with a disability were  
3 enrolled in the QUEST Expanded Access (QExA) Program. As of  
4 January 2013, there were 45,363 elderly and disabled individuals  
5 in the QExA Program per Department of Human Services and Med-  
6 QUEST Division statistics; and

7  
8           WHEREAS, many of these elderly and disabled individuals are  
9 determined to be at a certified nursing home level of care,  
10 i.e., skilled nursing level of care, intermediate care facility  
11 level of care, or sub-acute level of care, as certified by  
12 Hawaii's Peer Review Organization through a standardized DHS  
13 1147 Form; and

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15           WHEREAS, one of the stated goals of the QExA Program is to  
16 increase the percentage of certified nursing home level of care  
17 clients in home and community based services as a least  
18 restrictive care option to nursing home institutions; provided  
19 that those members who desire, or no longer can be safely  
20 serviced in their home, may also choose to receive home and  
21 community based services in community care foster family homes,  
22 expanded residential care homes, or assisted living homes with  
23 the QExA managed care plan acting as the payor of services with  
24 an assigned case manager; and

25  
26           WHEREAS, all community care settings that provide 24-hour  
27 care for QExA clients at nursing facility level of care,  
28 including community care foster family homes, expanded care



1 homes, and assisted living facilities must comply with all  
2 applicable federal regulations; and

3  
4 WHEREAS, Hawaii's statewide percentage of the nursing home  
5 level of care population receiving home and community based  
6 services has increased from 40.2 percent in 2008 to 64.9 percent  
7 in 2012; and

8  
9 WHEREAS, the Med-QUEST Quality Strategy sets an increase of  
10 five percent per year for clients receiving their care in a home  
11 and community based services setting as a target for the QExA  
12 Program; and

13  
14 WHEREAS, Hawaii's remaining QExA members at certified  
15 nursing facility level of care receive their care in an  
16 institutional setting with the QExA managed care plan acting as  
17 the payor of services with an assigned case manager; and

18  
19 WHEREAS, the Legislature finds that certified nursing  
20 facility level of care recipients are considered the most  
21 vulnerable population within the Medicaid managed-care  
22 populations, and these individuals' rights to due process and to  
23 quality care are protected by strict federal regulations  
24 especially in regards to the expansive complaints, grievance,  
25 and appeals processes as clearly stated in the Balanced Budget  
26 Act of 1997, 42 C.F.R. Part 438; and

27  
28 WHEREAS, in addition to the far reaching federal  
29 regulations specified in 42 C.F.R. Part 438, the Centers for  
30 Medicare and Medicaid Services has organized assurances for  
31 quality of care into a Home and Community Based Services Quality  
32 Framework that focuses attention on participant-centered desired  
33 outcomes, including participant rights and responsibilities and  
34 participant outcomes and satisfaction; and

35  
36 WHEREAS, the Legislature finds that the Centers for  
37 Medicare and Medicaid Services receives quarterly and annual  
38 reports from the Med-QUEST Division, which include details of  
39 compliance with the Balanced Budget Act of 1997, 42 C.F.R. Part  
40 438, Subparts A, C, D, and F as part of the Centers for Medicare  
41 and Medicaid Services' oversight of the Hawaii QUEST Expanded  
42 Section 115 Demonstration Waiver; now, therefore,



1 BE IT RESOLVED by the House of Representatives of the  
2 Twenty-seventh Legislature of the State of Hawaii, Regular  
3 Session of 2013, the Senate concurring, that the Department of  
4 Human Services is requested to conduct a study on the level of  
5 compliance with certain regulatory requirements in health care  
6 settings that provide care for Medicaid nursing home level of  
7 care individuals enrolled in the QExA Program; and

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9 BE IT FURTHER RESOLVED that the scope of the study is  
10 requested to include compliance with the regulatory requirements  
11 of the:

- 12  
13 (1) Balanced Budget Act, 1997, 42 C.F.R. Part 438,  
14 Subparts A, C, D, and F;  
15  
16 (2) Applicable Department of Human Services, Med-QUEST  
17 Division, and QExA current contract requirements;  
18  
19 (3) Med-QUEST Quality Strategy; and  
20  
21 (4) Med-QUEST Quality Standards; and  
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23 BE IT FURTHER RESOLVED that the scope of the study is  
24 requested also to include information on whether all certified  
25 nursing level of care clients are informed of, and have their  
26 rights regarding complaints, grievances, and appeals fully  
27 protected, implemented and reported as required in the community  
28 setting for home and community based services clients who are  
29 living in their private homes if serviced by case management  
30 agencies, community care foster family homes, expanded  
31 residential care homes, or assisted living facilities; and  
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33 BE IT FURTHER RESOLVED that the Department of Human  
34 Services is requested to include in the report of its study a  
35 review:

- 36  
37 (1) Of case management agency contracts to insure that all  
38 certified case management agencies are in compliance  
39 with federal regulations, QExA contracts, the Med-  
40 QUEST Division Quality Strategy, the Med-QUEST  
41 Division Quality Standards, and applicable state  
42 regulations;



- 1 (2) On whether QExA-contracted Medicaid providers who  
2 provide 24-hour care to QExA clients in home and  
3 community based settings are in compliance with  
4 federal requirements, current QExA contracts, the Med-  
5 QUEST Division Quality Strategy, the Med-QUEST  
6 Division Quality Standards, and applicable state  
7 regulations;  
8
- 9 (3) Of the Department of Human Services Social Service  
10 Department contract with Community Ties of America to  
11 insure that their scope of service regarding  
12 compliance monitoring processes within any care  
13 setting as designated per contracts that service  
14 Medicaid QExA nursing facility level of care clients  
15 are in compliance with federal requirements, current  
16 QExA contracts, the Med-QUEST Division Quality  
17 Strategy, the Med-QUEST Division Quality Standards,  
18 and applicable state regulations;  
19
- 20 (4) On whether the federal regulations, current QExA  
21 contract, the Med-QUEST Division Quality Strategy, and  
22 the Med-QUEST Division Quality Standards are  
23 applicable across all other institutional nursing  
24 facilities, such as free standing long term care  
25 facilities or hospital-based long term care facilities  
26 that provide 24-hour care at the skilled nursing  
27 level, intermediate care facility, or sub acute  
28 nursing level of care for Medicaid QExA clients; and  
29
- 30 (5) Of the notification and implementation processes of  
31 member rights for Hawaii's Medicaid QExA clients at  
32 certified nursing home level of care across all care  
33 settings in regards to due process concerning  
34 complaints, grievance and appeal processes, as well as  
35 a review of the protection and implementation of  
36 contracted provider's rights to their grievance and  
37 appeal processes who provide 24-hour home and  
38 community based services; and  
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40 BE IT FURTHER RESOLVED that the Department of Human  
41 Services is requested to submit its study report, including  
42 findings and recommendations, and any necessary implementing  
43 legislation needed to bring state and federal regulations into  
44 alignment in regards to home and community based services to the



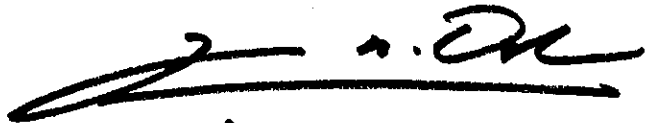
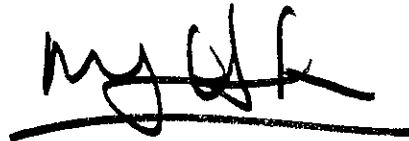
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1 Legislature no later than 20 days prior to the convening of the  
2 Regular Session of 2014; and

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BE IT FURTHER RESOLVED that certified copies of this  
Concurrent Resolution be transmitted to the Director of Human  
Services, Administrator of the Med-QUEST Division, Administrator  
of the Social Services Division, and Administrator of the Adult  
and Community Care Services Branch.

OFFERED BY: \_\_\_\_\_



MAR 13 2013

