
HOUSE 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

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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
29 homes, and assisted living facilities must comply with all
30 applicable federal regulations; and
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1 WHEREAS, Hawaii's statewide percentage of the nursing home
2 level of care population receiving home and community based
3 services has increased from 40.2 percent in 2008 to 64.9 percent
4 in 2012; and

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

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

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

24
25 WHEREAS, in addition to the far reaching federal
26 regulations specified in 42 C.F.R. Part 438, the Centers for
27 Medicare and Medicaid Services has organized assurances for
28 quality of care into a Home and Community Based Services Quality
29 Framework that focuses attention on participant-centered desired
30 outcomes, including participant rights and responsibilities and
31 participant outcomes and satisfaction; and

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33 WHEREAS, the Legislature finds that the Centers for
34 Medicare and Medicaid Services receives quarterly and annual
35 reports from the Med-QUEST Division, which include details of
36 compliance with the Balanced Budget Act of 1997, 42 C.F.R. Part
37 438, Subparts A, C, D, and F as part of the Centers for Medicare
38 and Medicaid Services' oversight of the Hawaii QUEST Expanded
39 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, that the Department of Human Services is
4 requested to conduct a study on the level of compliance with
5 certain regulatory requirements in health care settings that
6 provide care for Medicaid nursing home level of care individuals
7 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;
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 - 16 (2) Applicable Department of Human Services, Med-QUEST
17 Division, and QExA current contract requirements;
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 - 19 (3) Med-QUEST Quality Strategy; and
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 - 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:

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- 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



1 Division Quality Standards, and applicable state
2 regulations;

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4 (2) On whether QExA-contracted Medicaid providers who
5 provide 24-hour care to QExA clients in home and
6 community based settings are in compliance with
7 federal requirements, current QExA contracts, the Med-
8 QUEST Division Quality Strategy, the Med-QUEST
9 Division Quality Standards, and applicable state
10 regulations;

11
12 (3) Of the Department of Human Services Social Service
13 Department contract with Community Ties of America to
14 insure that their scope of service regarding
15 compliance monitoring processes within any care
16 setting as designated per contracts that service
17 Medicaid QExA nursing facility level of care clients
18 are in compliance with federal requirements, current
19 QExA contracts, the Med-QUEST Division Quality
20 Strategy, the Med-QUEST Division Quality Standards,
21 and applicable state regulations;

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23 (4) On whether the federal regulations, current QExA
24 contract, the Med-QUEST Division Quality Strategy, and
25 the Med-QUEST Division Quality Standards are
26 applicable across all other institutional nursing
27 facilities, such as free standing long term care
28 facilities or hospital-based long term care facilities
29 that provide 24-hour care at the skilled nursing
30 level, intermediate care facility, or sub acute
31 nursing level of care for Medicaid QExA clients; and
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33 (5) Of the notification and implementation processes of
34 member rights for Hawaii's Medicaid QExA clients at
35 certified nursing home level of care across all care
36 settings in regards to due process concerning
37 complaints, grievance and appeal processes, as well as
38 a review of the protection and implementation of
39 contracted provider's rights to their grievance and
40 appeal processes who provide 24-hour home and
41 community based services; and



1 BE IT FURTHER RESOLVED that the Department of Human
 2 Services is requested to submit its study report, including
 3 findings and recommendations, and any necessary implementing
 4 legislation needed to bring state and federal regulations into
 5 alignment in regards to home and community based services to the
 6 Legislature no later than 20 days prior to the convening of the
 7 Regular Session of 2014; and

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

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OFFERED BY:

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