



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019**

ON THE FOLLOWING MEASURE:

S.B. NO. 1415, RELATING TO OVERPAYMENTS.

BEFORE THE:

SENATE COMMITTEE ON HUMAN SERVICES

DATE: Friday, February 1, 2019

TIME: 2:45 p.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Clare E. Connors, Attorney General, or
Lili A. Young, Deputy Attorney General

Chair Ruderman and Members of the Committee:

The Department of the Attorney General provides comments for this measure. The purpose of this bill is to establish unspecified time limits in which the Department of Human Services (DHS) can recover public assistance overpayments made to vendors and recipients, and the DHS can recover Medicaid overpayments made to providers. The bill seeks to accomplish its purpose by amending sections 346-44 and 346-59.6, Hawaii Revised Statutes (HRS).

The limitation of time for recovery of overpayments may be inconsistent with state and federal law requirements for recovery. DHS administers programs designed to improve the social well-being and productivity of the people of the State to include administration of programs for child and adult welfare and economic assistance. These programs include the Medicaid Program, the Temporary Assistance for Needy Families (TANF) program, and the Supplemental Nutrition Assistance Program (SNAP). These programs rely significantly upon federal funding. As a condition of participation in Medicaid and SNAP, the State must comply with certain statutory requirements. The State is obligated to seek reimbursement of overpayments. See 42 U.S.C. §1396a(a)(25)(B) and 7 U.S.C. §2022(b)(1).

Under the Medicaid Program, states receive a portion of federal funds to pay providers for services rendered to Medicaid-eligible individuals. When an overpayment is discovered, the state remains liable to recover and refund the federal portion of the

overpayment. Pursuant to 42 C.F.R. §433.316, states have one year to seek or recover a Medicaid overpayment from a provider after discovery of the Medicaid overpayment (instead of from the date of payment to the provider), before a refund of the federal share of the overpayment is made to the Centers for Medicare and Medicaid Services. Imposing a time limit on overpayment recovery that starts from the date of payment to a provider could result in state funds being used to refund the federal overpayment, rather than the funds recovered from the provider, especially if the DHS does not discover the overpayment until after the time specified.

As a practical matter, many times DHS is not immediately aware of overpayments at the time they occur. It can take months or even years for DHS to discover overpayments. For example, an overpayment may be discovered over the course of a long investigation or audit. Even in situations where the overpayment is quickly discovered, it can take time to determine the full scope of an overpayment and to calculate the actual amount DHS will pursue in collections. Imposing a statute of limitations could bar the State from pursuing overpayment of funds while these funds are still being examined for collection.

The proposed legislation impairs the State's ability to seek these overpayments which may be inconsistent with the Federal authorities. In addition, at least in cases in which the overpayments occur as a result of the recipient's actions, it may not serve the State's interest to make these funds uncollectible by operation of law. For example, many overpayments are caused by a recipient claiming more benefits than what the recipient is entitled to receive. If the State is not allowed to recover overpayment in a fraud case, it would result in a windfall to the party committing fraud, and a potential loss of thousands of dollars of state and federal funds.

We recommend that this measure be held. Thank you for the opportunity to testify.



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

January 31, 2019

TO: The Honorable Senator Russell E. Ruderman, Chair
Senate Committee on Human Services

FROM: Pankaj Bhanot, Director

SUBJECT: **SB 1415 – RELATING TO OVERPAYMENTS**

Hearing: Friday, February 1, 2019, 2:45 p.m.
Conference Room 016, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates the measure, however, DHS opposes the time limits on collection of public assistance overpayments from recipients, and opposes the time limitations on recoveries of overpayments made to Medicaid providers.

PURPOSE: The purpose of this bill is to establish unspecified time limits in which the Director of DHS can recover public assistance overpayments made to recipients, and DHS can recover Medicaid overpayments made to providers under some circumstances.

DHS does have liabilities or debts in its ledgers that are being collected over a long period of time, are not able to collect, and there are debts that the department will likely never be able to collect on. This is particularly true for recipients.

This bill would not allow the DHS Director to pursue the collections after an unspecified period; if the debt is not identified or the debtor is not easily found may have the unintended consequence of increasing the amount of overpayments outstanding. Further the measure, does not give the Director or the state the authority to write-off those debts.

We oppose the provision in Section 1 that would place time limits on pursuing public assistance overpayments to recipients as it would conflict with federal regulations as stated in

in 7 Code of Federal Regulations (CFR) §273.18 (g)(1). 7 CFR §273.18(g) (1) establishes the collection method allowable to the State to collect Supplemental Nutrition Assistance Program (SNAP) overpayments. The federal regulation provides:

“(g) Collection methods -

(1)Allotment reduction. The following is our allotment reduction policy:

As a State agency, you must . . .	Unless . . .
(i) Automatically collect payments for any claim by reducing the amount of monthly benefits that a household receives	the claim is being collected at regular intervals at a higher amount or another household is already having its allotment reduced for the same claim (see paragraph (g)(1)(vi) of this section).
(ii) For an IPV claim, limit the amount reduced to the greater of \$20 per month or 20 percent of the household's monthly allotment or entitlement	the household agrees to a higher amount.
(iii) For an IHE or AE claim, limit the amount reduced to the greater of \$10 per month or 10 percent of the household's monthly allotment	the household agrees to a higher amount.
(iv) Not reduce the initial allotment when the household is first certified	the household agrees to this reduction.
(v) Not use additional involuntary collection methods	the additional payment is voluntary; or the source of the payment is irregular and

against individuals in a household that is already having its benefit reduced

unexpected such as a State tax refund or lottery winnings offset.

You may . . .

(vi) Collect using allotment reduction from two separate households for the same claim. However, you are not required to perform this simultaneous reduction.

(vii) Continue to use any other collection method against any individual who is not a current member of the household that is undergoing allotment reduction.”

The collection method as stated emphasizes that collection of SNAP overpayments from recipients are through monthly allotment reductions of either a flat amount ranging from \$10-\$20, or percentage of the monthly allotment ranging from 10-20%, depending on the cause for the overpayment. Any monthly collection amount that is greater than these values would have to be voluntary on the recipient’s part. This limitation to the amount that can be collected monthly would result in a collection effort that could range from months to years, depending on the overpayment amount that would be needing to be collected. This in turn makes it nearly impossible to confine overpayment collections to a finite time limit.

Further, the overpayments recovery requirements for SNAP are outlined under the applicable provisions of Public Law 104-134, the Debt Collection Improvement Act (DCIA) of 1996. Under the DCIA, U.S. Treasury was given the primary responsibility to act as the federal collection agent for delinquent debts. As such, Treasury now has the overall responsibility for the federal tax refund offset program (FTROP); the Federal salary offset program (FSOP), and administrative offset. The requirements under DCIA apply to SNAP recipient claims and the referral of these claims for federal collection purposes. SNAP benefits are 100% federally funded and SNAP claims are considered federal debts. Participation in FTROP and FSOP is mandated by the amended Food Stamp Act of 1977 at 7 USC §2022(b) (1) (C). The Act provides standards for establishing and collecting SNAP recipient claims.

We do oppose the provisions in Section 2 that would place time limits on pursuing Medicaid overpayments to providers. Although the addition of “Notwithstanding subsection

(d)..." language does allow the director to recover overpayments through all other lawful means, it does prohibit use of recoupment, tax offset and circuit court judgements (emphasis added). The latter are the means to collect overpayments, thus rendering the "Notwithstanding" language moot.

Additionally, the bill is contradictory to current federal law and regulations. Federal Medicaid overpayment rules are described in 42 CFR § 433.316. Under that regulation, states have one year to collect a Medicaid overpayment from a provider after the discovery of that Medicaid overpayment. The state is still liable to the federal government for the refund of the federal portion of the Medicaid overpayment. If DHS were to limit the time of when it would collect a Medicaid overpayment from a provider to the date of payment, DHS would still have to pay back the federal share of the Medicaid overpayment a year after the discovery of the Medicaid overpayment even if that discovery occurred a year or years after the Medicaid overpayment was paid. This bill could have the effect of increasing our financial liability to the federal government because it would shorten DHS timeframes to collect Medicaid overpayments in misalignment with federal rules.

Thank you for the opportunity to testify on this bill.

**Hawaii State Senate
Committee on Human Services**

LATE

**SB 1415 Relating to Overpayments
TESTIMONY IN SUPPORT**

**TESTIFIER: Palani Smith, Director of Market Development, Liberty
Dialysis/FMC**

DATE: Friday, February 1, 2019

TIME: 2:45 pm

PLACE: Conference Room 016

Good morning Chair Ruderman, Vice-Chair Rhoads and members of the Hawaii State Senate Committee on Human Services.

Thank you for allowing me to provide testimony IN SUPPORT of SB 1415 related to Medicaid overpayments in the State of Hawaii.

Liberty Dialysis-Hawaii, with its 21 clinics and 2,400 patients and their families, works tenaciously everyday to be a provider of sustainable, high-quality dialysis care. This legislation would provide the Centers of Medicaid and Medicare Services, Med-Quest and healthcare providers a more structured framework to do business together on behalf of beneficiaries in the State of Hawaii. The net result, of which, is to ensure a sustainable and robust healthcare network in our state for years to come.

Thank you again for allowing us to share our perspective on this issue.