



STATE OF HAWAII
DEPARTMENT OF HEALTH
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**Testimony IN SUPPORT of House Bill 943, HD 1
RELATING TO THE CIVIL MONETARY PENALTY SPECIAL FUND**

SENATOR SUZANNE CHUN OAKLAND, CHAIR
SENATE COMMITTEE ON HUMAN SERVICES AND HOUSING

SENATOR JOSH GREEN, CHAIR
SENATE COMMITTEE ON HEALTH

Hearing Date: Wednesday, March 25, 2015

Room Number: 414

1 **Fiscal Implications:** None

2 **Department Testimony:** Thank you for the opportunity to testify in STRONG SUPPORT of
3 this bill. This is an Administration bill requesting the establishment of a special fund in the
4 Office of Health Care Assurance (OHCA) to be called the Civil Monetary Penalty Special Fund.

5 OHCA currently has a special fund established under HRS 321-1.4(a) for the deposit of
6 state fines and fees assessed by the state in accordance with HRS 321-11.5(b) and 321-20. The
7 statutory language does not authorize the deposit of federal moneys or fines assessed and
8 collected by the federal government.

9 OHCA conducts federal certification surveys (inspections) on Medicare certified health
10 care facilities on behalf of the U.S. Centers for Medicare and Medicaid Services (CMS) in
11 accordance with Section 1864 of the U.S. Social Security Act (1864 Agreement). From time to
12 time OHCA issues federal deficiency citations on skilled nursing facilities that rise to the level of
13 a federal civil monetary penalty (CMP). As part of the facility's re-certification process, OHCA
14 will recommend to CMS a fine for the issued deficiencies. CMS then decides whether to accept

1 OHCA's recommendation, and if they do, CMS assesses and collects the fine from the health
2 care facility. This fine is the CMP. CMS will then share a portion of the CMP with OHCA. The
3 enforcement and CMP processes are pursuant to federal law, i.e., Social Security Act (Section
4 1819(h)(2)(B)(ii)(IV)(ff) and Section 1919(h)(3)(C)(ii)(IV)(ff)), 42 CFR 488.431, and 42 CFR
5 488.433.

6 In addition, the CMP moneys must only be used on programs and projects approved by
7 CMS for activities that protect or improve the quality of care for residents. It cannot be used by
8 OHCA for staff or operational expenses nor can it be used by a Medicare certified facility to
9 cover the costs of their operations. The funds must be used in a way that benefits the residents of
10 skilled nursing facilities. Moneys assessed and collected from a particular facility do not have to
11 be spent only on that facility. As an example, in 2013 OHCA obtained approval from CMS to
12 provide CMP funds to the Hawaii Association of Directors of Nursing Administration
13 (HADONA) to help fund an educational conference attended by caregivers from most or all of
14 the skilled nursing facilities. The conference was aimed at improving the caregivers' ability to
15 treat residents on a variety of health issues such as airway obstruction and infection control.

16 Since the federal CMP moneys come from a separate source other than from state fines
17 and fees, and since the moneys must only be used for CMS approved activities, it would be
18 inappropriate to comingle the federal funds with state funds. And these funds cannot be used for
19 state purposes and therefore cannot end up in the general fund as could happen if the current
20 special fund were to exceed its authorized ceiling on June 30 of each year.

21 As a result, the department respectfully requests the creation of a civil monetary penalty
22 special fund and to allow the department to deposit and expend federal CMP moneys.

23 Thank you for the opportunity to testify in STRONG SUPPORT of this bill.