



GOV. MSG. NO. 880

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 8, 2008

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith SB2542 SD2 HD2 CD1, without my approval, and with the statement of objections relating to the measure.

SB2542 SD2 HD2 CD1

A BILL FOR AN ACT RELATING TO PUBLIC
HEALTH.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

EXECUTIVE CHAMBERS

HONOLULU

July 8, 2008

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 2542

Honorable Members
Twenty-Fourth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 2542, entitled "A Bill for an Act Relating to Public Health."

The purpose of this bill is to codify the procedures for managed care supplemental payments by the Department of Human Services (the department) to federally qualified health centers (FQHCs) or rural health clinics (RHCs) that have contracts with Hawaii Medicaid managed care health plans. This bill also appropriates \$1 million to the Department of Health for medical care for the uninsured.

This bill is objectionable because it is unnecessary to restate in a state statute the requirements already imposed by federal law. In the case of services furnished by an FQHC or RHC pursuant to a contract with a managed care plan, the State plan must provide for a supplemental payment to the clinic to make up the difference between the amount paid under the managed care contract and the cost-based amount calculated in section 1902(bb)(1) of the Social Security Act. Therefore, FQHCs and RHCs have been receiving, and will continue to receive, their supplemental payments pursuant to federal law.

Although section 2 of this bill, detailing the reimbursement procedures for FQHCs and RHCs, is only to be implemented after approval of a State plan amendment by the Centers for Medicare and Medicaid Services, it is not good public

STATEMENT OF OBJECTIONS
SENATE BILL NO. 2542
Page 2

policy to place detailed procedural directives in statutes. Statutes should be broad statements of general policy, with detailed procedures placed in administrative rules or related administrative documents.

It would be unwieldy and cumbersome to change detailed procedures that are in statutes. The only way the department or the provider community could alter the statutory reimbursement procedures would be through further legislative action, which would need to occur each time there were changes in federal policy or requirements, or other circumstances in which changes would be beneficial.

This bill liberalizes the current prospective payment system, which would result in reimbursements in excess of the current mandated PPS supplemental payments to FQHCs and RHCs. This could have substantial fiscal impact since the State is already facing higher costs for provider reimbursements due to the anticipated reduction of the federal contribution to Hawaii's Medicaid program. Additionally, the \$1 million general fund appropriation in this bill is outside of the stated six-year balanced budget plan.

For the foregoing reasons, I am returning Senate Bill No. 2542 without my approval.

Respectfully,



LINDA LINGLE
Governor of Hawaii

A BILL FOR AN ACT

RELATING TO PUBLIC HEALTH.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that federally qualified
2 health centers provide the best system of community-based
3 primary care for people who are uninsured, underinsured, or
4 medicaid recipients. However, over the years, the federally
5 qualified health centers and rural health clinics have
6 experienced a tremendous increase in usage. Adding to the
7 strain placed on these facilities are the following:

- 8 (1) The ever-evolving nature and complexity of the
9 services provided;
- 10 (2) Inadequate procedures through which medicaid payment
11 and changes in the scope of services provided are
12 addressed; and
- 13 (3) The lack of adequate funding to pay for services for
14 the uninsured.

15 The purpose of this Act is to ensure that the community
16 health center system remains financially viable and stable in
17 the face of the increasing needs of the population of uninsured



1 and underinsured residents by creating a process whereby
2 community health centers and rural health clinics will receive
3 supplemental medicaid payments and seek modifications to their
4 scope of services.

5 SECTION 2. Chapter 346, Hawaii Revised Statutes, is
6 amended by adding five new sections to be appropriately
7 designated and to read as follows:

8 **"§346-A Centers for Medicare and Medicaid Services**

9 **approval.** The department shall implement sections 346-B, 346-C,
10 and 346-D, subject to approval of the Hawaii medicaid state plan
11 by the Centers for Medicare and Medicaid Services.

12 **§346-B Federally qualified health centers and rural health**
13 **clinics; reconciliation of managed care supplemental payments.**

14 (a) Federally qualified health centers or rural health clinics
15 that provide services under a contract with a medicaid managed
16 care organization shall receive estimated quarterly state
17 supplemental payments for the cost of furnishing such services
18 that are an estimate of the difference between the payments the
19 federally qualified health center or rural health clinic
20 receives from medicaid managed care organizations and payments
21 the federally qualified health center or rural health clinic
22 would have received under the Benefits Improvement and



1 Protection Act of 2000 prospective payment system methodology.
2 Not more than one month following the beginning of each calendar
3 quarter and based on the receipt of federally qualified health
4 center or rural health clinic submitted claims during the prior
5 calendar quarter, federally qualified health centers or rural
6 health clinics shall receive the difference between the
7 combination of payments the federally qualified health center or
8 rural health clinic receives from estimated supplemental
9 quarterly payments and payments received from medicaid managed
10 care organizations and payments the federally qualified health
11 center or rural health clinic would have received under the
12 Benefits Improvement and Protection Act of 2000 prospective
13 payment system methodology. Balances due from the federally
14 qualified health center shall be recouped from the next
15 quarter's estimated supplemental payment.

16 (b) The federally qualified health center or rural health
17 clinic shall file an annual settlement report summarizing
18 patient encounters within one hundred fifty days following the
19 end of a calendar year in which supplemental payments are
20 received from the department. The total amount of supplemental
21 and medicaid managed care organization payments received by the
22 federally qualified health center or rural health clinic shall





1 be reviewed against the amount that the actual number of visits
 2 provided under the federally qualified health centers' or rural
 3 health clinics' contract with the medicaid managed care
 4 organization would have yielded under the prospective payment
 5 system. The department shall also receive financial records
 6 from the medicaid managed care organization. As part of this
 7 review, the department may request additional documentation from
 8 the federally qualified health center or rural health clinic and
 9 the medicaid managed care organization to resolve differences
 10 between medicaid managed care organization and provider records.
 11 Upon conclusion of the review, the department shall calculate a
 12 final payment that is due to or from the participating federally
 13 qualified health center or rural health clinic. The department
 14 shall notify the participating federally qualified health center
 15 or rural health clinic of the balance due to or from the
 16 federally qualified health center or rural health clinic. The
 17 notice of program reimbursement shall include the department's
 18 calculation of the balance due to or from the federally
 19 qualified health center or rural health clinic.
 20 (c) For the purposes of this section, the payments
 21 received from medicaid managed care organizations exclude
 22 payments for non-prospective payment system services, managed

1 care risk pool accruals, distributions, or losses, or any pay-
2 for-performance bonuses or other forms of incentive payments
3 such as quality improvement recognition grants and awards.

4 (d) An alternative supplemental managed care payment
5 methodology other than the one set forth herein may be
6 implemented as long as the alternative payment methodology is
7 consented to in writing by the federally qualified health center
8 or rural health clinic to which the methodology applies.

9 **§346-C Federally qualified health center or rural health**
10 **clinic; adjustment for changes to scope of services.** (a)

11 Prospective payment system rates may be adjusted for any
12 increases or decreases in the scope of services furnished by a
13 participating federally qualified health center or rural health
14 clinic, provided that:

15 (1) The federally qualified health center or rural health
16 clinic notifies the department in writing of any
17 changes to the scope of services and the reasons for
18 those changes within sixty days of the effective date
19 of the changes;

20 (2) The federally qualified health center or rural health
21 clinic submits data, documentation, and schedules that
22 substantiate any changes in services and the related



1 adjustment of reasonable costs following medicare
2 principles of reimbursement; and

3 (3) The federally qualified health center or rural health
4 clinic proposes a projected adjusted rate within one
5 hundred fifty days of the changes to the scope of
6 services.

7 (b) This proposed projected adjusted rate is subject to
8 departmental approval. The proposed projected adjusted rate
9 shall be calculated based on a consolidated basis where the
10 federally qualified health center or rural health clinic takes
11 all costs for the center that would include both the costs
12 included in the base rate, as well as the additional costs,
13 provided that the federally qualified health center or rural
14 health clinic calculated the baseline prospective payment system
15 rate based on total consolidated costs. A net change in the
16 federally qualified health center's or rural health clinic's rate
17 shall be calculated by subtracting the federally qualified health
18 center's or rural health clinic's previously assigned prospective
19 payment system rate from its projected adjusted rate.

20 (c) Within one hundred twenty days of its receipt of the
21 projected adjusted rate and all additional documentation
22 requested by the department, the department shall notify the



1 federally qualified health center or rural health clinic of its
2 acceptance or rejection of the projected adjusted rate. Upon
3 approval by the department, the federally qualified health center
4 or rural health clinic shall be paid the projected rate, which
5 shall be effective from the date of the change in scope of
6 services through the date that a rate is calculated based upon
7 the first full fiscal year that includes the change in scope of
8 services.

9 (d) The department shall review the calculated rate of the
10 first full fiscal year cost report if the change of scope of
11 service is reflected in more than six months of the report. For
12 those federally qualified health centers or rural health clinics
13 in which the change of scope of services is in effect for six
14 months or less of the cost report fiscal year, review of the next
15 full fiscal year cost report also is required. The department
16 shall review the calculated inflated weighted average rate of
17 these two cost reports. The total costs of the first year report
18 shall be adjusted to the Medical Economic Index of the second
19 year report. Each report shall be weighted based upon number of
20 patient encounters.

21 (e) Upon receipt of the cost reports, the prospective
22 payment system rate shall be adjusted following a review by the



1 fiscal agent of the cost reports and documentation. Adjustments
2 shall be made for payments for the period from the effective
3 date of the change in scope of services through the date of the
4 final adjustment of the prospective payment system rate.

5 (f) For the purposes of prospective payment system rate
6 adjustment, a change in scope of services provided by a
7 federally qualified health center or rural health clinic means
8 the following:

- 9 (1) The addition of a new service, such as adding dental
10 services or any other medicaid covered service, that is
11 not incorporated in the baseline prospective payment
12 system rate or a deletion of a service that is
13 incorporated in the baseline prospective payment system
14 rate;
- 15 (2) A change in service resulting from amended regulatory
16 requirements or rules;
- 17 (3) A change in service resulting from relocation;
- 18 (4) A change in type, intensity, duration, or amount of
19 service resulting from a change in applicable
20 technology and medical practice used;
- 21 (5) An increase in service intensity, duration, or amount
22 of service resulting from changes in the types of



1 patients served, including but not limited to
2 populations with human immunodeficiency virus,
3 acquired immunodeficiency syndrome, or other chronic
4 diseases, or homeless, elderly, migrant, or other
5 special populations;

6 (6) A change in service resulting from a change in the
7 provider mix of a federally qualified health center or
8 a rural health clinic or one of its sites;

9 (7) Any changes in the scope of a project approved by the
10 federal Health Resources and Services Administration
11 where the change affects a covered service; or

12 (8) Changes in operating costs due to capital expenditures
13 associated with a modification of the scope of any of
14 the services, including new or expanded service
15 facilities, regulatory compliance, or changes in
16 technology or medical practices at the federally
17 qualified health center or rural health clinic.

18 (g) No change in costs, in and of itself, shall be
19 considered a scope of service change unless the cost is allowable
20 under medicaid principles of reimbursement and the net change in
21 the federally qualified health center's or rural health clinic's
22 per visit rate equals or exceeds three per cent for the affected



1 federally qualified health center or rural health clinic site.
2 For federally qualified health centers or rural health clinics
3 that filed consolidated cost reports for multiple sites to
4 establish their baseline prospective payment system rates, the
5 net change of three per cent shall be applied to the average per
6 visit rate of all the sites of the federally qualified health
7 center or rural health clinic for purposes of calculating the
8 costs associated with a scope of service change. For the
9 purposes of this section, "net change" means the per visit change
10 attributable to the cumulative effect of all increases or
11 decreases for a particular fiscal year.

12 (h) All references in this section to "fiscal year" shall
13 be construed to be references to the fiscal year of the
14 individual federally qualified health center or rural health
15 clinic, as the case may be.

16 **§346-D Federally qualified health center or rural health**
17 **clinic visit.** (a) Services eligible for prospective payment
18 system reimbursement are those services that are furnished by a
19 federally qualified health center or rural health clinic that
20 are:



- 1 (1) Within the legal authority of a federally qualified
2 health center to deliver, as defined in Section 1905
3 of the Social Security Act;
- 4 (2) Actually provided by the federally qualified health
5 center, either directly or under arrangements;
- 6 (3) Covered benefits under the medicaid program, as
7 defined in Section 4231 of the State Medicaid Manual
8 and the Hawaii medicaid state plan;
- 9 (4) Provided to a recipient eligible for medicaid
10 benefits;
- 11 (5) Delivered exclusively by health care professionals,
12 including physicians, physician's assistants, nurse
13 practitioners, nurse midwives, clinical social
14 workers, clinical psychologists, and other persons
15 acting within the lawful scope of their license or
16 certificate to provide services;
- 17 (6) Provided at the federally qualified health center's
18 practice site, a hospital emergency room, in an
19 inpatient setting, at the patient's place of
20 residence, including long term care facilities, or at
21 another medical facility; and



1 (7) Within the scope of services provided by the State
2 under its fee-for-service medicaid program and its
3 health QUEST program, on and after August 1994, and as
4 amended from time to time.

5 (b) Contacts with one or more health professionals and
6 multiple contacts with the same health professional that take
7 place on the same day and at a single location constitute a
8 single encounter, except when one of the following conditions
9 exists:

10 (1) After the first encounter, the patient suffers illness
11 or injury requiring additional diagnosis or treatment;
12 or

13 (2) The patient makes one or more visits for other
14 services such as dental or behavioral health.
15 Medicaid may pay for a maximum of one visit per day
16 for each of these services in addition to one medical
17 visit.

18 (c) A federally qualified health center or rural health
19 clinic that provides prenatal services, delivery services, and
20 post natal services may elect to bill the managed care
21 organization for all such services on a global payment basis.
22 Alternatively, it may bill for prenatal and post natal services



1 separately from delivery services and be paid the per visit
2 prospective payment system reimbursement for prenatal and post
3 natal visits. In this case, it may bill the managed care
4 organization separately for inpatient delivery services that are
5 not eligible for prospective payment system reimbursement.

6 **§346-E Appeal.** A federally qualified health center or
7 rural health clinic may appeal a decision made by the department
8 if the medicaid impact is \$10,000 or more, whereupon the
9 opportunity for an administrative hearing under chapter 91 shall
10 be afforded. Any federally qualified health center or rural
11 health clinic aggrieved by the final decision and order shall be
12 entitled to judicial review in accordance with chapter 92 or may
13 submit the matter to binding arbitration pursuant to chapter
14 658A."

15 SECTION 3. (a) Notwithstanding any law to the contrary,
16 reports for final payment under section 346-B, Hawaii Revised
17 Statutes, for each calendar year shall be filed within one
18 hundred fifty days from the date the department of human
19 services adopts forms and issues written instructions for
20 requesting a final payment under that section.

21 (b) All payments owed by the department of human services
22 shall be made on a timely basis.



1 SECTION 4. A federally qualified health center or rural
2 health clinic shall submit a prospective payment system rate
3 adjustment request under section 346-C, Hawaii Revised Statutes,
4 within one hundred fifty days of the beginning of the calendar
5 year occurring after the department of human services first
6 adopts forms and issues written instructions for applying for a
7 prospective payment system rate adjustment under section 346-C,
8 Hawaii Revised Statutes, if, during the prior fiscal year, the
9 federally qualified health center or rural health clinic
10 experienced a decrease in the scope of services; provided that
11 the federally qualified health center or rural health clinic
12 either knew or should have known the rate adjustment would
13 result in a significantly lower per-visit rate. As used in this
14 paragraph, "significantly lower" means an average rate decrease
15 in excess of three per cent.

16 Notwithstanding any law to the contrary, the first full
17 fiscal year's cost reports shall be deemed to have been
18 submitted in a timely manner if filed within one hundred fifty
19 days after the department of human services adopts forms and
20 issues written instructions for applying for a prospective
21 payment system rate adjustment for changes to scope of service
22 under section 346-C, Hawaii Revised Statutes.



1 SECTION 5. The department of health may provide resources
2 to nonprofit, community-based health care providers for direct
3 medical care for the uninsured, including:

- 4 (1) Primary medical;
- 5 (2) Dental;
- 6 (3) Behavioral health care; and
- 7 (4) Ancillary services, including:
 - 8 (A) Education;
 - 9 (B) Follow-up;
 - 10 (C) Outreach; and
 - 11 (D) Pharmacy services.

12 Distribution of funds may be on a "per-visit" basis, taking into
13 consideration need on all islands.

14 SECTION 6. There is appropriated out of the general
15 revenues of the State of Hawaii the sum of \$1,000,000, or so
16 much thereof as may be necessary for fiscal year 2008-2009, to
17 the department of health for direct medical care to the
18 uninsured.

19 The sum appropriated shall be expended by the department of
20 health for the purposes of this Act.

21 SECTION 7. In codifying the new sections added by section
22 2 of this Act, the revisor of statutes shall substitute



1 appropriate section numbers for the letters used in designating
2 the new sections in this Act.

3 SECTION 8. New statutory material is underscored.

4 SECTION 9. This Act shall take effect on July 1, 2008;
5 provided that section 2 of this Act shall take effect upon
6 approval of the Hawaii medicaid state plan by the Centers for
7 Medicare and Medicaid Services.

