
A BILL FOR AN ACT

RELATING TO MEDICAID.

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

1 PART I

2 SECTION 1. The legislature finds that the lien amounts
3 stated in the department of human services' notice of lien have
4 been challenged on numerous occasions in cases where the
5 department is seeking restitution.

6 The purpose of this part is to clarify that the lien amount
7 stated in notices of lien sent by the department of human
8 services for reimbursement of medicaid benefits shall be presumed
9 to be valid under certain conditions.

10 SECTION 2. Section 346-29.5, Hawaii Revised Statutes, is
11 amended by amending subsection (b) to read as follows:

12 "(b) The department may also place a lien against the real
13 property of any recipient receiving medical assistance who is an
14 inpatient in a nursing facility, intermediate care facility for
15 individuals with intellectual disabilities, or other medical
16 institution, after a state determination, pursuant to notice and
17 hearing requirements of chapter 91, that the recipient cannot



1 reasonably be expected to be discharged from the medical
2 institution and returned home.

3 When restitution is sought in connection with the
4 sentencing of a third person who has caused injury to a
5 recipient of medical assistance, the department shall provide to
6 the person against whom restitution is sought a written notice
7 of lien and an itemized list of payments that identifies the
8 provider of services, dates of service provision, amounts
9 billed, amounts paid, and dates of payments. Absent a good
10 faith basis contesting the amount or validity of a specific line
11 item charge or charges in the lien, the entire amount shall be
12 presumed to be valid in determining the amount of restitution.

13 There is a rebuttable presumption that the recipient cannot
14 reasonably be expected to be discharged from the facility and
15 return home if the recipient or a representative of the
16 recipient declares that there is no intent to return home or if
17 the recipient has been institutionalized for six months or
18 longer without a discharge plan.

19 (1) The department may not place a lien on the recipient's
20 home if the recipient's:

21 (A) Spouse;

22 (B) Minor, blind, or disabled child; or



1 (C) Sibling who has an equity interest in the home
2 and who was residing in the home for a period of
3 at least one year immediately before the date of
4 the recipient's admission to the medical
5 institution;

6 is lawfully residing in the home.

7 (2) The department shall not recover funds from the lien
8 on the recipient's home when:

9 (A) A sibling who was residing in the home for a
10 period of at least one year immediately before
11 the date of the recipient's admission to the
12 medical institution; or

13 (B) A son or daughter who was residing in the
14 recipient's home for a period of at least two
15 years immediately before the date of the
16 recipient's admission to the medical institution,
17 and who establishes to the satisfaction of the
18 State that he or she provided care to the
19 recipient which permitted such recipient to
20 reside at home rather than in an institution;



1 lawfully resides in the home and has lawfully resided
2 in the home on a continuous basis since the date of
3 the recipient's admission to the medical institution.

4 (3) The department also shall not recover funds from the
5 lien if the recipient has a surviving spouse[+] or
6 surviving minor, blind, or disabled child.

7 (4) Any lien imposed with respect to this subsection shall
8 be dissolved upon the individual's discharge from the
9 medical institution and return home."

10 SECTION 3. Section 346-37, Hawaii Revised Statutes, is
11 amended by amending subsection (g) to read as follows:

12 "(g) The lien of the department for reimbursement of costs
13 of medical assistance or burial payments under subsection (f),
14 shall attach by a written notice of lien served upon the
15 claimant's attorney or upon the third person, the third person's
16 agent, attorney, or insurance company. The method of service
17 shall be by certified or registered mail, return receipt
18 requested, or by delivery of the notice of lien personally to
19 the individuals referred to. Service by certified or registered
20 mail is complete upon receipt. The notice of lien shall state
21 the name of the injured, diseased, or deceased person, the
22 amount of the lien, and the date of the accident or incident



1 which caused the injuries, disease, or death which necessitated
2 the department's medical assistance or burial payments. If the
3 notice of lien is served upon the claimant's attorney, the
4 notice of lien shall state that the claimant's attorney shall
5 pay the full amount of the lien from the proceeds of any
6 judgment, settlement, or compromise based on the incident or
7 accident. If the notice of lien is served upon the third
8 person[~~7~~] or the third person's agent, attorney, or insurance
9 company, the notice of lien shall state that the third person
10 shall pay the full amount of the lien prior to disbursing any of
11 the proceeds to the claimant or to the claimant's attorney. A
12 notice of lien may be amended from time to time until
13 extinguished, each amendment taking effect upon proper service.

14 When restitution is sought in connection with the
15 sentencing of a third person who has caused injury to a
16 recipient of medical assistance, the department shall provide to
17 the person against whom restitution is sought a written notice
18 of lien and an itemized list of payments that identifies the
19 provider of services, dates of service provision, amounts
20 billed, amounts paid, and dates of payments. Absent a good
21 faith basis contesting the amount or validity of a specific line



1 item charge or charges in the lien, the entire amount shall be
2 presumed to be valid in determining the amount of restitution."

3 PART II

4 SECTION 4. Section 346-332, Hawaii Revised Statutes, is
5 amended by amending subsection (b) to read as follows:

6 "(b) Community care foster family homes shall be required
7 to reserve at least one bed for medicaid patients[-]; provided
8 that if:

9 (1) A medicaid patient, who is the only medicaid patient
10 residing in the community care foster family home,
11 leaves the community care foster family home; and

12 (2) There is only one remaining private-pay client in the
13 community care foster family home and a physician who
14 is licensed to practice under chapter 453 has
15 certified to the department in a timely manner that
16 the removal of that private-pay client from the
17 community care foster family home may cause that
18 client to sustain transfer trauma,

19 then the department may not, for a period of at least six months
20 following the medicaid patient's departure, and on account of
21 the medicaid patient's departure, suspend or revoke the



1 certificate of approval issued to the community care foster
2 family home under section 346-334."

3 SECTION 5. Section 346-334, Hawaii Revised Statutes, is
4 amended by amending subsection (b) to read as follows:

5 "(b) The department shall adopt rules pursuant to chapter
6 91 relating to:

- 7 (1) Standards of conditions and competence for the
8 operation of community care foster family homes;
- 9 (2) Procedures for obtaining and renewing a certificate of
10 approval from the department;
- 11 (3) Minimum grievance procedures for clients of community
12 care foster family home services; and
- 13 (4) Requirements for primary and substitute caregivers
14 caring for three clients in community care foster
15 family homes including:
- 16 (A) Mandating that primary [~~and substitute~~]
17 caregivers be twenty-one years of age or
18 older[+], and substitute caregivers be eighteen
19 years of age or older;
- 20 (B) Mandating that primary and substitute caregivers
21 complete a minimum of twelve hours of continuing
22 education every twelve months or [~~at least~~] a



- 1 minimum of twenty-four hours of continuing
2 education every twenty-four months;
- 3 (C) Allowing the primary caregiver to be absent from
4 the community care foster family home for no more
5 than twenty-eight hours in a calendar week, not
6 to exceed five hours per day; provided that the
7 substitute caregiver is present in the community
8 care foster family home during the primary
9 caregiver's absence;
- 10 (D) Where the primary caregiver is absent from the
11 community care foster family home in excess of
12 the hours as prescribed in subparagraph (C),
13 mandating that the substitute caregiver be a
14 certified nurse aide; and
- 15 (E) Mandating that the substitute caregiver have, at
16 a minimum, one year prior work experience as a
17 caregiver in a community residential setting or
18 in a medical facility."

PART III

20 SECTION 6. It is the intent of this Act not to jeopardize
21 the receipt of any federal aid. If any provision of this Act,
22 or the application thereof to any person or circumstance is



1 found to be in conflict with federal requirements that are a
2 prescribed condition for the allocation of federal funds to the
3 State, the provision shall be deemed void; provided that the
4 voided provision shall not affect other provisions or
5 applications of the Act that can be given effect without the
6 voided provision or application, and to this end the provisions
7 of this Act are severable.

8 SECTION 7. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 8. This Act shall take effect on July 1, 2050;
11 provided that the amendments made to section 346-334(b), Hawaii
12 Revised Statutes, by section 5 of this Act shall not be repealed
13 when section 346-334(b), Hawaii Revised Statutes, is reenacted
14 on June 30, 2013, pursuant to Act 221, Session Laws of Hawaii
15 2011.



Report Title:

Medicaid; Liens; Community Care Foster Family Homes

Description:

Sets lien requirements for the liens for restitution from a third party. For community care foster family homes, temporarily delays loss of license upon departure of last Medicaid client and lowers substitute caregiver minimum age. Effective July 1, 2050. (SB2713 HD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

