

S.B. NO. 2713

JAN 25 2012

A BILL FOR AN ACT

RELATING TO MEDICAID.

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

1 SECTION 1. The legislature finds that the lien amounts
2 stated in the department of human services' notice of lien have
3 been challenged on numerous occasions in cases where the
4 department is seeking restitution. The purpose of this Act is
5 to clarify that the lien amount stated in notices of lien sent
6 by the department of human services for reimbursement of Medicaid
7 benefits shall be presumed to be valid.

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

10 "(b) The department may also place a lien against the real
11 property of any recipient receiving medical assistance who is an
12 inpatient in a nursing facility, intermediate care facility for
13 individuals with intellectual disabilities, or other medical
14 institution, after a state determination, pursuant to notice and
15 hearing requirements of chapter 91, that the recipient cannot
16 reasonably be expected to be discharged from the medical
17 institution and returned home. The lien amount shall be
18 presumed to be valid. There is a rebuttable presumption that

1 the recipient cannot reasonably be expected to be discharged
2 from the facility and return home if the recipient or a
3 representative of the recipient declares that there is no intent
4 to return home or if the recipient has been institutionalized
5 for six months or longer without a discharge plan.

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

8 (A) Spouse;

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

10 (C) Sibling who has an equity interest in the home
11 and who was residing in the home for a period of
12 at least one year immediately before the date of
13 the recipient's admission to the medical
14 institution;

15 is lawfully residing in the home.

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

18 (A) A sibling who was residing in the home for a
19 period of at least one year immediately before
20 the date of the recipient's admission to the
21 medical institution; or

S.B. NO. 2713

1 (B) A son or daughter who was residing in the
2 recipient's home for a period of at least two
3 years immediately before the date of the
4 recipient's admission to the medical institution,
5 and who establishes to the satisfaction of the
6 State that he or she provided care to the
7 recipient which permitted such recipient to
8 reside at home rather than in an institution;
9 lawfully resides in the home and has lawfully
10 resided in the home on a continuous basis since
11 the date of the recipient's admission to the
12 medical institution.

13 (3) The department also shall not recover funds from the
14 lien if the recipient has a surviving spouse; or
15 surviving minor, blind, or disabled child.

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

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

21 "(g) The lien of the department for reimbursement of costs
22 of medical assistance or burial payments under subsection (f),

1 shall attach by a written notice of lien served upon the
2 claimant's attorney or upon the third person, the third person's
3 agent, attorney, or insurance company. The method of service
4 shall be by certified or registered mail, return receipt
5 requested, or by delivery of the notice of lien personally to
6 the individuals referred to. Service by certified or registered
7 mail is complete upon receipt. The notice of lien shall state
8 the name of the injured, diseased, or deceased person, the
9 amount of the lien, and the date of the accident or incident
10 which caused the injuries, disease, or death which necessitated
11 the department's medical assistance or burial payments. If the
12 notice of lien is served upon the claimant's attorney, the
13 notice of lien shall state that the claimant's attorney shall
14 pay the full amount of the lien from the proceeds of any
15 judgment, settlement, or compromise based on the incident or
16 accident. If the notice of lien is served upon the third
17 person, the third person's agent, attorney, or insurance
18 company, the notice of lien shall state that the third person
19 shall pay the full amount of the lien prior to disbursing any of
20 the proceeds to the claimant or to the claimant's attorney. A
21 notice of lien may be amended from time to time until

S.B. NO. 2713

1 extinguished, each amendment taking effect upon proper service.

2 The lien amount shall be presumed to be valid."

3 SECTION 4. New statutory material is underscored.

4 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY: 

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BY REQUEST

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S.B. NO. 2713

Report Title:

Medicaid; Reimbursements

Description:

Amends sections 346-29.5(b) and 346-37(g), Hawaii Revised Statutes, to state that the lien amount in the Notice of Lien sent by the Department of Human Services for reimbursement of Medicaid benefits shall be presumed to be valid.

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

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO MEDICAID.

PURPOSE: The purpose of this Act is to clarify that the lien amount stated in Notices of Lien shall be presumed to be valid.

MEANS: Amend sections 346-29.5(b) and 346-37(g), Hawaii Revised Statutes.

JUSTIFICATION: The lien amounts stated in the Department of Human Services' Notices of Lien have been challenged on numerous occasions in cases where the department is seeking restitution. This bill would reduce the need for a court hearing to prove the amount of the lien.

Impact on the public: There will be an impact on any person who causes damages or injuries to another person, by expediting the determination of the amount of restitution that must be paid.

Impact on the department and other agencies: These amendments will assist the Department of Human Services in its collections of reimbursements for its Medicaid liens.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: None.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: Upon approval.