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# A BILL FOR AN ACT

RELATING TO HEALTH CARE.

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

1           SECTION 1. The legislature finds that in 2013, the federal  
2 government established the durable medical equipment competitive  
3 bidding program in one hundred metropolitan areas across the  
4 nation. The city and county of Honolulu was included as one of  
5 those areas and is the only Hawaii locality that was required to  
6 participate.

7           In the years since the competitive bidding program was  
8 established, the legislature finds that the program has been  
9 harmful to beneficiaries on Oahu. The program has reduced  
10 reimbursements drastically for local providers, compromised the  
11 quality of care for residents, disrupted health status, and  
12 increased costs for seniors and their families.

13           There are numerous examples that illustrate the negative  
14 consequences of this program. For example, the minimum shipping  
15 time for equipment and supplies is two to four days, and the  
16 typical wait time for physician-ordered wheelchairs and hospital  
17 beds is four to eight weeks. This often results in discharge  
18 delays, which are very costly for the entire health care system.



1 In order to avoid these delays, many patients and families dip  
2 into their own savings and pay the full price for the equipment  
3 themselves. In other instances, providers loan out their  
4 equipment with no guarantee the equipment will be returned.

5 The legislature further finds that there is also a unique  
6 problem in Hawaii of contacting vendors, since many are based on  
7 the mainland with no special phone or service hours to account  
8 for the time difference. As a result, if a beneficiary in  
9 Hawaii attempts to make any inquiry about an order after 11:00  
10 a.m. Hawaii-Aleutian standard time, the offices are often  
11 closed.

12 To make matters worse, the federal government plans to roll  
13 out a form of the competitive bidding program into the neighbor  
14 islands in 2016, which will create greater challenges for rural  
15 beneficiaries when trying to access needed services, resulting  
16 in reductions in their health and quality of life.

17 The purpose of this Act is to establish a licensure program  
18 for suppliers of durable medical equipment, prosthetics,  
19 orthotics, and related supplies through the office of health  
20 care assurance. This licensure program will help patients in



1 Hawaii get access to critical, life-sustaining medical supplies  
2 by setting standards of service for suppliers.

3 SECTION 2. Chapter 321, Hawaii Revised Statutes, is  
4 amended by adding a new part to be appropriately designated and  
5 to read as follows:

6 "PART . DURABLE MEDICAL EQUIPMENT SUPPLIER LICENSE PROGRAM

7 §321-A Title. This part shall be known and may be cited  
8 as the "durable medical equipment supplier license program".

9 §321-B Definitions. As used in this part:

10 "Consumer" means a health care facility, health care  
11 professional, or health care provider, as defined in section  
12 432E-1, or any individual who is prescribed durable medical  
13 equipment as the result of medical necessity.

14 "Department" means the department of health.

15 "Durable medical equipment" means equipment that is  
16 considered a selected product under the Centers for Medicare and  
17 Medicaid Services durable medical equipment, prosthetics,  
18 orthotics, and supplies competitive bidding program that can  
19 stand repeated use; is primarily and customarily used to serve a  
20 medical purpose; is generally not useful to a person in the  
21 absence of an illness or injury; is appropriate for use in the



1 home; does not contain any prescription drug; and is not  
2 considered to be a specialty item, equipment, or service.

3 "Durable medical equipment supplier" means a supplier of  
4 durable medical equipment.

5 §321-C Licensing. It shall be unlawful for any person to  
6 operate as a durable medical equipment supplier that sells,  
7 dispenses, delivers, or services durable medical equipment to a  
8 consumer in the State without first obtaining a license. To  
9 receive a license, a durable medical equipment supplier shall  
10 attest and provide corroborating documentation to the department  
11 that the supplier:

12 (1) Is in compliance with the business registration laws  
13 of the State and has all required tax identification  
14 numbers;

15 (2) Is licensed and in good standing in the state in which  
16 its dispensing facilities are primarily located, if  
17 applicable, and complies with all applicable state and  
18 federal laws, rules, and standards;

19 (3) Has designated a responsible agent or agents either in  
20 or out of the State who will be responsible for



1 providing timely and satisfactory services to  
2 consumers in the State; provided that:

3 (A) The responsible agent or agents must be available  
4 to consumers in the State by phone during  
5 standard business hours in Hawaii to answer  
6 inquiries or resolve issues; and

7 (B) If the responsible agent or agents are not  
8 immediately available, then the supplier shall  
9 have a system capable of accepting and recording  
10 incoming phone inquiries; provided that the  
11 supplier shall respond no later than one business  
12 day after the inquiry is received;

13 (4) Has implemented and maintains written procedures at  
14 each location for handling complaints and problems  
15 from all consumers, which includes a complaint file  
16 documenting complaints or problems and resolution of  
17 the complaints or problems; and

18 (5) Will agree to notify consumers within two business  
19 days if the supplier cannot or will not provide the  
20 equipment, item, or service ordered; provided that  
21 suppliers may be exempt from this requirement if



1 selling, dispensing, delivering, or servicing  
2 specialty equipment or items.

3 **§321-D License fee.** The department may assess a license  
4 fee of no more than \$350 on each durable medical equipment  
5 supplier who receives a license pursuant to section 321-C. The  
6 license fee collected shall be deposited into the office of  
7 health care assurance special fund pursuant to section 321-1.4.

8 **§321-E Exemptions.** Pharmacies licensed pursuant to  
9 chapter 461 are exempt from this part.

10 **§321-F Rules.** The department may adopt rules pursuant to  
11 chapter 91 to carry out the purpose of this part.

12 **§321-G Severability.** If any provision in this part or the  
13 application thereof to any person or circumstance is held  
14 invalid, the invalidity shall not affect the other provisions or  
15 application of this part that can be given effect without the  
16 invalid provision or application, and to this end the provisions  
17 of this part are severable."

18 SECTION 3. Section 321-1.4, Hawaii Revised Statutes, is  
19 amended by amending subsections (a) to (c) to read as follows:

20 "(a) There is established within the department of health,  
21 to be administered by the department of health, the office of



1 health care assurance special fund into which shall be deposited  
2 moneys collected under section 321-11.5(b), license fees for the  
3 administration of the durable medical equipment supplier license  
4 program collected pursuant to section 321-D, and all  
5 administrative penalties imposed and collected by the office of  
6 health care assurance pursuant to section 321-20.

7 (b) Moneys in the special fund shall be expended by the  
8 department of health:

9 (1) To assist in offsetting operating costs and  
10 educational program expenses of the department of  
11 health's office of health care assurance; and

12 (2) For the purpose of enhancing the capacity of office of  
13 health care assurance programs to:

14 (A) Improve public health outreach efforts, program  
15 and community development, and consultations to  
16 industries regulated; ~~and~~

17 (B) Educate the public, the staff of the department  
18 of health, ~~[+]~~and~~[+]~~ other departments within the  
19 State, as well as staff and providers of all  
20 health care facilities and agencies regulated~~[-]~~;

21 and



1            (C) Administer and support the durable medical  
2            equipment supplier license program established  
3            pursuant to part \_\_\_\_\_.

4 Not more than [~~\$300,000~~] \$ \_\_\_\_\_ of the special fund may be  
5 used during any fiscal year for the activities carried out by  
6 the office of health care assurance.

7            (c) Any amount in the special fund in excess of [~~\$356,000~~]  
8 \$ \_\_\_\_\_ on June 30 of each year shall be deposited into the  
9 general fund."

10           SECTION 4. Section 26H-6, Hawaii Revised Statutes, shall  
11 not apply to this Act.

12           SECTION 5. In codifying the new sections added by section  
13 2 of this Act, the revisor of statutes shall substitute  
14 appropriate section numbers for the letters used in designating  
15 the new sections in this Act.

16           SECTION 6. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18           SECTION 7. This Act shall take effect upon its approval.

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**Report Title:**

Durable Medical Equipment; Licensure; Health Care Assurance  
Special Fund

**Description:**

Establishes a durable medical equipment supplier license program for suppliers of durable medical equipment, prosthetics, orthotics, and related supplies through the office of health care assurance. Allows license fees to be deposited into the office of health care assurance special fund. Amends the cap on amounts of the health care assurance special fund that may be used per fiscal year. Amends the balance of the office of health care assurance special fund above which moneys are deposited into the general fund. (SD1)

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