



STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809-0339

January 23, 2017

TO: The Honorable Senator Josh Green, Chair
Senate Committee on Human Services

FROM: Pankaj Bhanot, Director

SUBJECT: **SB 28 RELATING TO MEDICAID PROVIDERS**

Hearing: January 23, 2017, 2:45 p.m.
Conference Room 016, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates the intent of the bill to increase Supplemental Nutrition Assistance Program (SNAP) participation. The connection between poverty, food insecurity and health is also well-established. However, DHS respectfully opposes this measure due to concerns regarding implementation as well as issues of confidentiality and privacy related to SNAP.

DHS is actively working on a strategy to transition the SNAP application process to the DHS Enterprise platform. The vision of the fully-developed DHS Enterprise system is that programs will be interoperable and an individual will be able to apply for SNAP and Medicaid benefits at the same time.

PURPOSE: The purpose of this measure is to authorize health care providers under the State Medicaid program to ask about Supplemental Nutrition Assistance Program (SNAP) (formerly known as Food Stamps) participation on Medicaid certification and re-certification forms.

Of great concern is the measure's conflict with existing SNAP regulations. SNAP is an exclusively federally funded program through the United States Department of Agriculture (USDA), Food and Nutrition Service (FNS). The USDA FNS, in establishing uniform standards of operation for the SNAP program nationally, provides regulations that protect an individual's right to privacy

and confidentiality. Asking an applicant if they are receiving SNAP violates an individual's right to privacy and confidentiality. Disclosure of information obtained from a recipient may be made only to persons directly connected with the administration of SNAP or to others provided that the program recipient signs a release form documenting their agreement to the specific release of information. Such an agreement shall not be a condition of receipt of benefits as provided under 7 CFR Section 272.1 (c).

A health insurance application form can be used to apply for SNAP, however the form must contain questions and information required by 7 CFR Section 273.2 (b) including a means to start the application process; with a name, address and signature, a description of SNAP expedited service, a warning about the consequences of providing false information about the program and a nondiscrimination statement. Additionally, if the health care form is used for screening purposes only, it will not formally start the SNAP application process, does not secure a SNAP application date, and official notices regarding a SNAP interview date are not provided to the SNAP household.

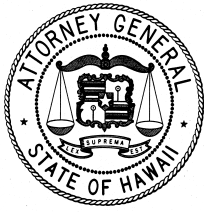
The federal FNS determines the efficiency and effectiveness of SNAP by measuring the State's compliance with certain standards contained in the Food and Nutrition Act and regulations.

States are required under federal regulations to submit participation rates on a monthly basis. State-by-State information on participation is based on SNAP administrative data and Census Bureau survey data which is used to estimate the number of participants in each State. Hawaii's SNAP participation rate has increased every year since FY 2008.

Further, the measure as drafted refers to "certification" and re-certification" and clarification is required. Medicaid program does not use forms called "Medicaid certification or recertification" forms that a health care provider would use to capture information about a Medicaid beneficiary. Clarity is needed that would enable DHS to respond more precisely from the Medicaid perspective.

Lastly, as indicated above, DHS is working on a strategy to transition the SNAP application process to the DHS Enterprise platform. Once implemented, an individual will be able to apply for SNAP and Medicaid benefits at the same time. DHS asks for the Legislature's support of IT related requests that are in the Executive budget.

Thank you for the opportunity to provide comments on this bill.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2017**

ON THE FOLLOWING MEASURE:

S.B. NO. 0028, RELATING TO MEDICAID PROVIDERS.

BEFORE THE:

SENATE COMMITTEE ON HUMAN SERVICES

DATE: Monday, January 23, 2017 **TIME:** 2:45 p.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Andrea A. Suzuki, Deputy Attorney General

Chair Green and Members of the Committee:

The Department of the Attorney General has concerns about this measure as currently drafted and provides the following comments and suggested amendments.

The purpose of this bill is to authorize health care providers to ask their clients about participation in the federal supplemental nutrition assistance program (SNAP) and subsequently report the aggregate responses to the Legislature.

Section 2 of this bill amends chapter 346, Hawaii Revised Statutes, by adding a new section to achieve the purpose of this bill. Specifically, new subsection (b) on page 4, lines 4-8, provides that information shall be collected and released to the Legislature but that the name of any individual shall not be released. We are concerned this may be too vague in terms of what information shall be collected. More importantly, it does not fully notate what items shall *not* be released in order to be compliant with 45 C.F.R. § 164.514(b)(2)(i), which governs the de-identification of protected health information and lists the 18 identifiers that must be removed prior to this type of disclosure.

In addition, the reference to federal authority for privacy standards on page 4, lines 9-12, is too narrow and would only apply to protected health information. The Food Stamp and Food Distribution Program confidentiality provisions would also apply. Namely, 7 C.F.R. § 272.1(c)(1) limits the use and disclosure of information obtained from food stamp applicants to persons directly connected with the administration of the SNAP program or to others *if* the recipient signs a release form documenting agreement

to the specific release of information. This information would arguably include whether the recipient is a Medicaid beneficiary. We suggest that the new subsection should reflect this requirement and should also refer to applicable state and federal law to provide full protection for any personally identifiable information and other SNAP aggregated information that may be released to the legislature.

We respectfully suggest the following amendments to address these concerns and comments:

(b) Each provider of health care under the state medicaid program may release to the legislature ~~aggregate supplemental nutrition assistance program participation information~~ **information on the number of medicaid patients who are not participating in the supplemental nutrition assistance program**; provided that the release of information shall ~~not include the name of any individual and~~ shall be subject to applicable privacy standards established under **state and federal laws including, but not limited to, the** federal medicaid regulations and the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191.

If the Committee passes this bill, we respectfully ask that it include the recommended amendments. We are available to provide any further suggestions to achieve the purpose of this bill.