



**STATE OF HAWAII
DEPARTMENT OF HEALTH**

P. O. Box 3378
Honolulu, HI 96801-3378
doh.testimony@doh.hawaii.gov

**Testimony IN SUPPORT of House Bill 943
RELATING TO THE CIVIL MONETARY PENALTY SPECIAL FUND**

REPRESENTATIVE SYLVIA LUKE, CHAIR
HOUSE COMMITTEE ON FINANCE

Hearing Date: Friday, February 27, 2015

Room Number: 308

1 **Fiscal Implications:** None

2 **Department Testimony:** Thank you for the opportunity to testify in SUPPORT of this bill.

3 This is an Administration bill requesting the establishment of a special fund in the Office of
4 Health Care Assurance (OHCA) to be called the Civil Monetary Penalty Special Fund.

5 OHCA currently has a special fund established under HRS 321-1.4(a) for the deposit of
6 state fines and fees assessed by the state in accordance with HRS 321-11.5(b) and 321-20. The
7 statutory language does not authorize the deposit of federal moneys or fines assessed and
8 collected by the federal government.

9 OHCA conducts federal certification surveys (inspections) on Medicare certified health
10 care facilities on behalf of the U.S. Centers for Medicare and Medicaid Services (CMS) in
11 accordance with Section 1864 of the U.S. Social Security Act (1864 Agreement). From time to
12 time OHCA issues federal deficiency citations on skilled nursing facilities that rise to the level of
13 a federal civil monetary penalty (CMP). As part of the facility's re-certification process, OHCA
14 will recommend to CMS a fine for the issued deficiencies. CMS then decides whether to accept
15 OHCA's recommendation, and if they do, CMS assesses and collects the fine from the health

1 care facility. This fine is the CMP. CMS will then share a portion of the CMP with OHCA. The
2 enforcement and CMP processes are pursuant to federal law, i.e., Social Security Act (Section
3 1819(h)(2)(B)(ii)(IV)(ff) and Section 1919(h)(3)(C)(ii)(IV)(ff)), 42 CFR 488.431, and 42 CFR
4 488.433.

5 In addition, the CMP moneys must only be used on programs and projects approved by
6 CMS for activities that protect or improve the quality of care for residents. It cannot be used by
7 OHCA for staff or operational expenses nor can it be used by a Medicare certified facility to
8 cover the costs of their operations. The funds must be used in a way that benefits the residents of
9 skilled nursing facilities. Moneys assessed and collected from a particular facility do not have to
10 be spent only on that facility. As an example, in 2013 OHCA obtained approval from CMS to
11 provide CMP funds to the Hawaii Association of Directors of Nursing Administration
12 (HADONA) to help fund an educational conference attended by caregivers from most or all of
13 the skilled nursing facilities. The conference was aimed at improving the caregivers' ability to
14 treat residents on a variety of health issues such as airway obstruction and infection control.

15 Since the federal CMP moneys come from a separate source other than from state fines
16 and fees, and since the moneys must only be used for CMS approved activities, it would be
17 inappropriate to comingle the federal funds with state funds. And these funds cannot be used for
18 state purposes and therefore cannot end up in the general fund as could happen if the current
19 special fund were to exceed its authorized ceiling on June 30 of each year.

20 As a result, the department respectfully requests the creation of a civil monetary penalty
21 special fund and to allow the department to deposit and expend federal CMP moneys.

22 Thank you for the opportunity to testify in SUPPORT of this bill.

23 **Offered Amendments:** None.