HOUSE OF REPRESENTATIVES TWENTY-EIGHTH LEGISLATURE, 2015 STATE OF HAWAII

H.B. NO. 58

A BILL FOR AN ACT

RELATING TO THE LICENSURE OF DURABLE MEDICAL EQUIPMENT SUPPLIERS.

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

SECTION 1. Medicare beneficiaries in Hawaii are
 experiencing a reduction in access to quality care as a result
 of the change in the way medicare purchases its durable medical
 equipment and prosthetics, orthotics, and supplies through a
 competitive bidding program. The unintended consequences of the
 implementation of this national program in Honolulu have so far
 been disastrous.

8 Only thirteen of the ninety-seven vendors selected are 9 located within the State. The minimum shipping time is two to 10 four days and the typical wait time for physician-ordered 11 wheelchairs and hospital beds is four to eight weeks. Out-of-12 state vendors do not have special phone or service hours to 13 account for the time difference which means when medicare 14 beneficiaries in Hawaii call after 11:00 a.m., the offices are 15 closed. Without access to timely, local services, medicare beneficiaries in Hawaii have been forced to wait for or forego 16

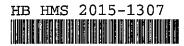


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necessary durable medical equipment and devices. This
 restricted access to care has led to reductions in health,
 increases in preventable admissions and readmissions, increases
 in costs to beneficiaries and the medicare system, and reduced
 guality of life for medicare patients.

6 The national bidding program has the laudable intention of 7 cutting down on fraud and abuse and reducing medicare costs 8 nationally. However, a reduction in cost by twelve to fifty-six per cent in Hawaii, as envisioned by the program, is 9 10 unsustainable given the higher fixed costs of rent, utilities, 11 and shipping that businesses in Hawaii face. Hawaii's fees are 12 now on par with those in the Washington, D.C. area, even though 13 the cost of living index in Honolulu is 21.4 per cent higher 14 than Washington, D.C.

Medicare costs in Hawaii were already low. A review of 2011 fee-for-service medicare spending for durable medical equipment shows that Hawaii had the lowest per capita durable medical equipment cost in the nation. On average, each Hawaii beneficiary consumes only \$82.54 in durable medical equipment, compared with \$230.16 nationally. Furthermore, the total medicare cost for a Hawaii beneficiary, on average, is only



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1 \$530.98, compared with \$792.99 nationally.

The office of health care assurance is organized under the state department of health under Chapter 321, Hawaii Revised Statutes, to perform all state licensing activities for healthcare facilities, agencies, and organizations in Hawaii, including conducting all on-site state licensing surveys and medicare certification surveys on behalf of the United States Centers for Medicare and Medicaid Services.

9 The purpose of this Act is to provide for licensure and 10 oversight by the office of health care assurance of durable 11 medical equipment suppliers participating in the nationwide 12 competitive bidding program to provide durable medical equipment to medicare beneficiaries in Hawaii. Due to exigent 13 14 circumstances, the legislature finds that this licensure program 15 is needed immediately to ensure that Hawaii's patients have 16 timely access to the critical, life-sustaining medical supplies 17 they need. Therefore, this licensure program shall be exempt 18 from the provisions of section 26H-6, Hawaii Revised Statutes. 19 SECTION 2. Chapter 321, Hawaii Revised Statutes, is 20 amended by adding a new part to be appropriately designated and 21 to read as follows:



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| 1 | "PART . | | | | |
|----|------------------------------------------------------------------|--|--|--|--|
| 2 | DURABLE MEDICAL EQUIPMENT SUPPLIER LICENSING AND PATIENT | | | | |
| 3 | PROTECTION PROGRAM | | | | |
| 4 | §321- Title. This part shall be known and may be cited | | | | |
| 5 | as the "Durable Medical Equipment Supplier Licensing and Patient | | | | |
| 6 | Protection Program." | | | | |
| 7 | §321- Findings and declaration of necessity. The | | | | |
| 8 | legislature finds that it is necessary to establish standards | | | | |
| 9 | for the licensing of durable medical equipment suppliers | | | | |
| 10 | participating in the nationwide competitive bidding program for | | | | |
| 11 | durable medical equipment, prosthetics, orthotics, and supplies | | | | |
| 12 | established by section 302 of the Medicare Modernization Act of | | | | |
| 13 | 2003 to protect medical patients in the State from life | | | | |
| 14 | threatening delays in receiving life-sustaining durable medical | | | | |
| 15 | equipment that must be shipped from the mainland. | | | | |
| 16 | §321- Definitions. As used in this part: | | | | |
| 17 | "Appropriate physical location" means a physical facility | | | | |
| 18 | within the boundaries of the State used to store durable medical | | | | |
| 19 | equipment inventory. | | | | |
| 20 | "Durable medical equipment" means equipment that can stand | | | | |
| 21 | repeated use, is primarily and customarily used to serve a | | | | |



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medical purpose, is generally not useful to a person in the
 absence of an illness or injury, and is appropriate for use in
 the home.

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"Supplier" means a supplier of durable medical equipment,
prosthetics, orthotics, and related supplies participating in
the nationwide competitive bidding program for durable medical
equipment, prosthetics, orthotics, and supplies established by
section 302 of the Medicare Modernization Act of 2003.

9 §321- Licensing. (a) All suppliers of durable medical
10 equipment shall be licensed pursuant to this part.

(b) A supplier of durable medical equipment shall bedeemed to be licensed if:

13 (1) The supplier maintains an appropriate physical
14 location within the State;

15 (2) The supplier has passed an annual inspection performed
16 by the office of health care assurance; and

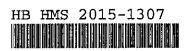
17 (3) The supplier is registered to do business in the18 State.

19 (c) The office of health care assurance shall maintain a20 list of suppliers licensed under this part.



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| 1 | §321 | - Annual inspection. (a) The office of health care |
|----|-----------|---------------------------------------------------------|
| 2 | assurance | shall perform an inspection of all durable medical |
| 3 | equipment | suppliers participating in the nationwide durable |
| 4 | medical e | quipment competitive bidding program and licensed |
| 5 | pursuant | to this part. |
| 6 | (b) | The inspection shall consist of: |
| 7 | (1) | Confirmation that the durable medical equipment |
| 8 | | supplier maintains an appropriate physical location |
| 9 | | within the State; |
| 10 | (2) | Confirmation that the durable medical equipment |
| 11 | | supplier maintains a working local telephone number; |
| 12 | (3) | Confirmation that a full-time employee is available to |
| 13 | | Hawaii residents during normal local business hours to |
| 14 | | answer customer inquiries; and |
| 15 | (4) | Confirmation that the durable medical equipment |
| 16 | | supplier is registered with the business registration |
| 17 | | division of the department of commerce and consumer |
| 18 | | affairs to do business in the State. |
| 19 | §321 | - License fees. A fee of \$ per license year |
| 20 | shall be | assessed on all suppliers of durable medical equipment. |



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The license fees collected shall be deposited in the health care
 assurance special fund pursuant to section 321-1.4.

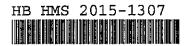
3 §321- Supplier duties. (a) A durable medical equipment
4 supplier and its agents shall have a good faith duty to comply
5 with the annual inspection performed by the office of health
6 care assurance.

7 (b) A durable medical equipment supplier shall register
8 its business with the business registration division of the
9 department of commerce and consumer affairs and shall provide a
10 copy of a current business registration to the office of health
11 care assurance during its annual inspection.

12 §321- Rules. The director shall adopt rules pursuant to
13 chapter 91 to carry out the purposes of this part.

14 §321- Severability. If any provision of this part or 15 the application thereof to any person or circumstance is held 16 invalid, the invalidity shall not affect the other provisions or 17 application, and to this end the provisions of this part are 18 severable."

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



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| 1 | "(a) | The | re is established within the department of health, | | |
|----|------------------------------------------------------------------|------|----------------------------------------------------|--|--|
| 2 | to be administered by the department of health, the office of | | | | |
| 3 | health care assurance special fund into which shall be deposited | | | | |
| 4 | moneys collected under section 321-11.5(b), license fees | | | | |
| 5 | collected | unde | r section 321- , and all administrative | | |
| 6 | penalties | impo | sed and collected by the office of health care | | |
| 7 | assurance | purs | uant to section 321-20. | | |
| 8 | (b) | Mone | ys in the special fund shall be expended by the | | |
| 9 | departmen | t of | health: | | |
| 10 | (1) | то а | ssist in offsetting operating costs and | | |
| 11 | | educ | ational program expenses of the department of | | |
| 12 | | heal | th's office of health care assurance; and | | |
| 13 | (2) | For | the purpose of enhancing the capacity of office of | | |
| 14 | | heal | th care assurance programs to: | | |
| 15 | | (A) | Improve public health outreach efforts, program | | |
| 16 | | | and community development, and consultations to | | |
| 17 | | | industries regulated; [and] | | |
| 18 | | (B) | Educate the public, the staff of the department | | |
| 19 | | | of health, [+]and[+] other departments within the | | |
| 20 | | | State, as well as staff and providers of all | | |



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| 1 | | health care facilities and agencies regulated $[-]$; | | | |
|----|---------------------------------------------------------------|-------------------------------------------------------|--|--|--|
| 2 | | and | | | |
| 3 | <u>(C)</u> | Administer the durable medical equipment supplier | | | |
| 4 | | licensing and patient protection program pursuant | | | |
| 5 | | to part of this chapter. | | | |
| 6 | Not more than | $[\frac{300,000}{5}]$ of the special fund may be | | | |
| 7 | used during any fiscal year for the activities carried out by | | | | |
| 8 | the office of health care assurance." | | | | |
| 9 | SECTION 4 | . There is appropriated out of the office of | | | |
| 10 | health care assurance special fund established pursuant to | | | | |
| 11 | section 321-1.4, Hawaii Revised Statutes, the sum of \$ or | | | | |
| 12 | so much thereof as may be necessary for fiscal year 2015-2016 | | | | |
| 13 | and the same sum or so much thereof as may be necessary for | | | | |
| 14 | fiscal year 2016-2017 for expenses incurred by the office of | | | | |
| 15 | healthcare assurance to establish and administer the durable | | | | |
| 16 | medical equipment supplier licensing and patient protection | | | | |
| 17 | program, inclu | ding one full-time equivalent (1.0 FTE) position | | | |
| 18 | to administer | the program. | | | |
| 19 | The sums | appropriated shall be expended by the office of | | | |
| 20 | health care as | surance for the purposes of this Act. | | | |



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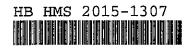
SECTION 5. Statutory material to be repealed is bracketed
 and stricken. New statutory material is underscored.

3 SECTION 6. This Act shall take effect on July 1, 2015.

INTRODUCED BY:

Alla a puti

JAN 2 3 2015





Report Title:

Centers for Medicare and Medicaid Services; Licensure; Durable Medical Equipment, Prosthetics, Orthotics, and Supplies

Description:

Establishes licensure requirement for durable medical equipment suppliers participating in the nationwide competitive bidding program through the office of health care assurance. Appropriates funds from the office of health care assurance special fund.

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

