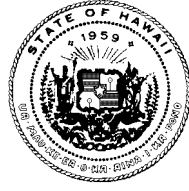


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STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES

P. O. Box 339
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January 30, 2022

TO: The Honorable Representative Richard H.K. Onishi, Chair
House Committee on Labor & Tourism

FROM: Cathy Betts, Director

SUBJECT: **HB 1404 – RELATING TO HUMAN SERVICES.**

Hearing: February 1, 2022, 9:30 a.m.
Via Videoconference, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates the measure's intent and offers comments and concerns. DHS defers to the Department of Labor & Industrial Relations (DLIR).

PURPOSE: The purpose of this bill requires the Department of Human Services to compile information regarding employers having employees who receive public assistance and to submit a report to the Legislature on the 50 employers with the highest number of employees receiving public assistance. Requires the Department of Labor and Industrial Relations to share employment data with the Department of Human Services.

DHS agrees that public assistance programs are essential to ensure that all residents have access to healthy food, quality health insurance, cash assistance, child care, housing assistance, educational support, employment training, and other services. Since the pandemic, more Hawaii residents are enrolled in one or more DHS programs as the pandemic's health and economic impacts continue.

Currently, the Med-QUEST Division (MQD) has a data-sharing agreement with DLIR; however, the use of the data is restricted. It may be possible to amend the agreement or

develop a new agreement to address the bill's purposes. However, as noted below, not all of the requested information, such as information on spouses and dependents, is available even if the agreement was amended.

DHS will likely need an additional general fund appropriation to reimburse DLIR for its expenses as DLIR previously reported is required by federal law. If the measure passes, MQD will work with DLIR to revise the current or develop a new data-sharing agreement to compile most of the information listed and produce the report relative to employers and Medicaid enrollment.

Of note, individuals may enroll in both employer-sponsored insurance and Medicaid at the same time. Medicaid would be the secondary insurance since Medicaid is the payer of last resort (the last to be billed). Thus, employers may be providing health insurance for their employees while the individuals are also enrolled in Medicaid. Also, consider that the costs of family plans offered by the employer may be substantial, and individuals often choose coverage for themselves while Medicaid covers other household members. Notably, the report would not distinguish between employers that are or are not offering health insurance to their employees.

Additionally, for medical assistance programs, the employer's name is only self-reported by the applicant at the time of initial application. As it is not required for ongoing medical assistance benefits, the employer information reported by the recipients to be reviewed by DHS as specified by the bill would likely not provide the information per the intent of the measure. Also, section 3(b)(4) proposes the department include information on the employed recipient, their spouse, and dependents who may also be covered by public assistance. However, this information is not available in any of the information systems.

DHS is also concerned that by implementing this law, DHS would not want to jeopardize an individual's employment as the employer may not want to be identified on the top 50 employers list and may terminate the individual for having accessed publicly available health care coverage.

Further, DHS cannot run a report for all public benefit programs. For example, the Supplemental Nutrition Assistance Program (SNAP) and financial programs overseen by the

Benefits, Employment & Support Services Division (BESSD) do not capture the name of the recipient's employer as a factor in determining eligibility for BESSD programs. Therefore, it is unlikely that DHS would meet this requirement for all public assistance programs.

DHS has additional privacy concerns. Depending upon the number of employees and the employer's location, revealing the employer's name may lead to the re-identification of employees. The need to suppress data per each location of the same employer may be cumbersome and thwart the overall goal of the measure.

As the bill progresses, we will likely update the Legislature with additional resource needs or clarifications and request an effective date that will allow enough time to modify the agreements, build, and implement the functional capability to run the requested report for all benefits. DHS asks for the Legislature's support of DHS budget executive budget requests to restore funding and positions to remain responsive to residents' and providers' needs and comply with multiple existing program requirements. Additional tasks without additional resources will cause additional pressure and strain on our staff.

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



STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
www.labor.hawaii.gov

February 1, 2022

To: The Honorable Richard H. K. Onishi, Chair,
The Honorable Jackson D. Sayama, Vice Chair, and
Members of the House Committee on Labor & Tourism

Date: Tuesday, February 1, 2022
Time: 9:30 a.m.
Place: Via Videoconference

From: Anne Perreira-Eustaquio, Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. 1404 RELATING TO HUMAN SERVICES

I. OVERVIEW OF PROPOSED LEGISLATION

This proposal seeks to add a new section to chapter 346, Hawaii Revised Statutes (HRS), requiring the Department of Human Services (DHS) to compile information regarding employers with employees who receive public assistance. The measure requires DLIR to assist the DHS in the form of sharing employment data to achieve this purpose.

The DLIR appreciates the intent of this measure but notes concerns, including a significant fiscal impact.

II. CURRENT LAW

The current law does not require DHS access to Unemployment Insurance (UI) data as proposed in this measure nor for DLIR to assist DHS in ascertaining whether DHS beneficiaries of health care coverage benefits are in excess of minimum requirements established by Chapter 393 (HRS), Hawaii's Prepaid Health Care Act.

III. COMMENTS ON THE HOUSE BILL

DLIR is willing to work with DHS to determine how the legislative purpose can be achieved within the statutory disclosure provisions contained in Chapters 383 & 393, HRS and notes it would require additional staffing and resources to carry out the functions contained in the measure.

The U.S. Department of Labor (USDOL) has long interpreted methods of administration to require the confidentiality of Unemployment Insurance (UI)

information and to follow the Congressional mandate that UI information be used only for the purpose for which it is directed. According to HRS §383-95 and Hawaii Administrative Rules §12-5-211 to §12-5-220, disclosure of information from workers, employers, or other persons or groups in the course of administering the state employment security program shall be held confidential and shall not be disclosed unless authorized requesting agencies have entered into a written agreement with the Department.

USDOL guidance in [Unemployment Insurance Program Letter No. 34-97](#) sets forth the criteria regarding the basic confidentiality and disclosure requirements for the Federal-State unemployment compensation (UC) program for sharing information with other public officials. Records may be disclosed where the public official is enforcing a law and:

1. The disclosure is permitted by State law (§383-95),
2. The disclosure would not significantly hinder or delay the processing of UI claims, or significantly hinder other activities of the State employment security agency, or such disclosure would not impede the efficient administration of the State employment security law,
3. The public officials continue to safeguard the confidentiality of the records, and
4. Arrangements are made for the reimbursement of costs.

Should this proposal be enacted, an information sharing agreement with DHS would be required to satisfy its limited purposes. As a condition for the data exchange, DHS would have to provide relevant recipients' personal identifying information to crossmatch against the DLIR-UI employer and wage records. All expenses associated with providing the data must be reimbursed by the requesting agency in accordance with the federal requirements. The actual costs of furnishing the information are dependent upon the terms of the final agreement executed between DHS and DLIR-UI.

The DLIR is also concerned about the support required by its Disability Compensation Division (DCD) to determine the number of employees who were public-service recipients and who were also eligible to receive employer-provided health benefits in excess of the minimum requirements established by Chapter 393, HRS.

The department is unable to discern the intent of the language contained in the proposed section (b)(6) on page 3, lines 17-20. If the intent is to identify the number of recipients who were eligible to receive health care benefits provided in Chapter 393, the DLIR requires two additional Auditors and one Office Assistant at an annual cost of \$146,000 to arrive at this information. This determination requires a week-by-week review of the employers' payroll records to ascertain the employees' eligibility, which may change from month-to-month as eligibility is based on the number of hours an employee works each week.

Furthermore, the DLIR must determine whether the employer's health benefits are greater than what are called for (i.e., minimum) in Chapter 393, HRS. The DLIR would like to point out that if the employer's plan meets, but does not exceed minimum requirements, recipients who qualify for this plan would not be counted. If the intent of the review is to identify the number of recipients who met the eligibility requirements under Chapter 393 and would have been eligible to enroll in the employer's plan, the study would understate the true number of those who could have been covered under the employer's health plans.