

ACT 201

H.B. NO. 1724

A Bill for an Act Relating to Medical Assistance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 346-37, Hawaii Revised Statutes, is amended to read as follows:

“§346-37 Recovery of payments[.] and costs of medical assistance. (a) If a recipient under this chapter dies leaving an estate and does not have a surviving spouse, child, father, mother, grandfather, grandmother, grandchild, stepfather, stepmother, or any designated heir, the department [may file] shall have a valid claim against the estate for the amount of social services overpayments, financial assistance overpayments, or burial payments granted[, and the claim shall be allowed]. The department shall file a claim against the estate of a deceased recipient of medical assistance for the amount of medical assistance granted, only if the recipient was age fifty-five or over when such medical assistance was received and there is no surviving spouse, or surviving child who is under twenty-one years of age, or blind, or disabled. The department shall file a claim against the estate of a recipient of medical assistance who was an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution only if there is no surviving spouse or surviving child who is under twenty-one years of age, or blind, or disabled.

(b) If any portion of any public assistance, including medical assistance, food stamps, or burial payment, was obtained by any fraudulent device, including but not limited to those [mentioned in] under section 346-34, or if any public assistance, including medical assistance, food stamps, or burial payment, was furnished or provided after receipt of income or resources which were not reported to the department as required by this chapter or by the department, the department may file

a claim against the estate of the deceased recipient notwithstanding [the provisions in] subsection (a).

(c) If the department has provided medical assistance or burial payment to a person who was injured, suffered a disease, or died under circumstances creating a tort or other liability against [some] a third person, the department shall have a right to recover from the third person an amount not to exceed the [amount] costs of medical assistance or burial payment furnished or to be furnished by the department. The department shall as to this right be subrogated to any right or claim that a claimant, defined in subsection (k), has against [such] the third person for special damages to the extent of the [amount] costs of medical assistance or burial payment furnished or to be furnished by the department.

To enforce [such] its rights, the department may intervene or join in any action or proceeding brought by a claimant against the third person who is liable. If [such] the action or proceeding is not commenced within six months after the first day on which medical assistance or burial payment is furnished by the department in connection with the injury, disease, or death involved, the department may institute and prosecute legal proceedings against the third person who is liable for the injury, disease, or death, in a state court, either alone (in its own name or in the name of a claimant) or in conjunction with the claimant.

(d) [When] If a claim is made by the claimant under subsection (c) against a third person, the claimant shall give timely notice of [such] the action to the department. An attorney representing a claimant shall make reasonable inquiry as to whether the claimant has received or is receiving medical assistance related to the incident involved in the action from the department. Upon obtaining a judgment or reaching a settlement through negotiation or legal proceedings, but before the release of any award or settlement proceeds to any person:

- (1) The claimant's attorney, if the attorney has received actual notice from the department of a lien or if the attorney has reason to know that a lien exists, or
- (2) The claimant or the claimant's heirs, representatives, or beneficiaries, if not represented by an attorney who has received actual notice of the lien,

shall notify the department immediately.

(e) [Where] If third party liability is found to exist, or [where] if the issue of [such] third party liability is settled or compromised without a finding of liability, regardless of who institutes legal proceedings or seeks other means of recovering, the department shall have a lien in the amount of the costs of medical assistance [and] or burial payment made against the proceeds from special damages awarded in a suit or settlement. The lien shall attach as provided¹ by subsection (f). [Where] If a notice of lien is properly served upon the attorney representing the claimant as provided in subsection (f), that attorney shall satisfy the lien prior to disbursing any of the proceeds of the suit or settlement to the attorney's client. [Where] If a notice of lien is properly served upon the third person [described in] under subsection (c), the third person's agent or attorney, or upon the third person's insurance company, as provided in subsection (f), it shall be the responsibility of the third person to satisfy the lien prior to disbursing any of the proceeds to the claimant's attorney. This section is not intended to restrict or diminish the right of the department to settle or compromise its subrogation or lien rights [provided herein] under this section .

(f) The lien of the department for reimbursement of costs of medical assistance or burial payments[, provided in] under subsection (e), shall not attach unless [and until] a notice of lien is served upon the claimant's attorney or upon the third person, the third person's agent, attorney, or insurance company. The method of service shall be by registered mail, return receipt requested, or by delivery of the notice of lien personally to the individuals referred to. Service by registered mail is

complete upon receipt. The notice of lien shall state the name of the injured, diseased, or deceased person, the amount of the lien, and the date of the accident or incident which caused the injuries, disease, or death which necessitated the department's medical assistance or burial payments. [Where] If the notice of lien is served upon the claimant's attorney, the notice of lien shall state that the claimant's attorney shall pay the amount of the lien from the proceeds of any judgment, settlement, or compromise based on the incident or accident. [Where] If the notice of lien is served upon the third person [described in] under subsection (c), the third person's agent, attorney, or insurance company, the notice of lien shall state that the third person shall satisfy the lien prior to disbursing any of the proceeds to the claimant or to the claimant's attorney. A notice of lien may be amended from time to time until extinguished, each amendment taking effect upon proper service.

(g) [In the event that] If there is a dispute between the claimant, the claimant's agent, or the claimant's attorney, and the department concerning the existence of the lien or the amount of the lien, the claimant, the claimant's agent, or the claimant's attorney may request in writing a hearing on the dispute. After receipt by the department of [such] a written request, the department shall conduct an administrative hearing within a reasonable period of time. [The provisions of chapter] Chapter 91 shall apply to [such a] the hearing. Funds sufficient to extinguish the lien rights of the department shall be either retained by the person or entity served with the notice of lien, or shall be paid to the department pending its decision.

(h) Upon the recovery of any claim as provided in this section, the amount [so] recovered shall be paid into the treasury of the State, and if the amount for which claim was paid was in part from federal funds, the proper portion thereof shall be paid by the director of finance into the treasury of the United States, and the director of finance shall report the payment to the department.

(i) Any person failing to satisfy the lien as required by subsections (e) and (f), although able to do so from the proceeds of [such] the suit or settlement, shall be personally liable to the department for any damage proximately caused to the department by such failure.

(j) No action taken by the department in connection with the rights [afforded] under this section shall [operate to] deny to the claimant the recovery for that portion of the claimant's damage not covered [hereunder] under this section .

(k) For purposes of this section, the term "claimant" shall include an injured or diseased person, the person's guardian, or the personal representative, estate, dependents, or survivors, of the deceased person.

(l) The department may agree with a provider or medical care insurer for the provision of medical care services or medical assistance to any claimant, and the agreement may provide for the department to be the exclusive entity authorized to recover all costs of medical assistance rendered to a claimant. The department may recover all costs through the use of the lien procedures established by this section.

(m) For purposes of this section, the term "costs of medical assistance" furnished or to be furnished by the department shall include:

- (1) The value or cost of medical care services provided directly by the department;
- (2) The amount paid by the department to a provider for medical care services rendered or to be rendered;
- (3) The value or cost of medical care services rendered or to be rendered by a provider that has received the equivalent of an insurance benefit, capitation rate, and other fee or like charge paid by the department or by a medical care insurer to provide for medical care services."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 16, 1997.)

Note

1. Prior to amendment “in” appeared here.