

ACT 137

S.B. NO. 2076

A Bill for an Act Relating to Health Care.

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

SECTION 1. The legislature finds that in 2013, the federal government established the durable medical equipment competitive bidding program in one hundred metropolitan areas across the nation. The city and county of Honolulu was included as one of those areas and is the only Hawaii locality that was required to participate.

In the years since the competitive bidding program was established, the legislature finds that the program has been harmful to beneficiaries on Oahu. The program has reduced reimbursements drastically for local providers, com-

promised the quality of care for residents, disrupted health status, and increased costs for seniors and their families.

There are numerous examples that illustrate the negative consequences of this program. For example, the minimum shipping time for equipment and supplies is two to four days, and the typical wait time for physician-ordered wheelchairs and hospital beds is four to eight weeks. This often results in discharge delays, which are very costly for the entire health care system. In order to avoid these delays, many patients and families dip into their own savings and pay the full price for the equipment themselves. In other instances, providers loan out their equipment with no guarantee the equipment will be returned.

The legislature further finds that there is also a unique problem in Hawaii of contacting vendors, since many are based on the mainland with no special phone or service hours to account for the time difference. As a result, if a beneficiary in Hawaii attempts to make any inquiry about an order after 11:00 a.m. Hawaii-Aleutian standard time, the offices are often closed.

To make matters worse, the federal government plans to roll out a form of the competitive bidding program into the neighbor islands in 2016, which will create greater challenges for rural beneficiaries when trying to access needed services, resulting in reductions in their health and quality of life.

The purpose of this Act is to establish a licensure program for suppliers of durable medical equipment, prosthetics, orthotics, and related supplies through the office of health care assurance. This licensure program will help patients in Hawaii get access to critical, life-sustaining medical supplies by setting standards of service for suppliers.

SECTION 2. Chapter 321, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . DURABLE MEDICAL EQUIPMENT SUPPLIER LICENSE PROGRAM

§321-A Title. This part shall be known and may be cited as the “durable medical equipment supplier license program”.

§321-B Definitions. As used in this part:

“Consumer” means a health care facility, health care professional, or health care provider, as defined in section 432E-1, or any individual who is prescribed durable medical equipment as the result of medical necessity.

“Department” means the department of health.

“Durable medical equipment” means equipment that is considered a selected product under the Centers for Medicare and Medicaid Services durable medical equipment, prosthetics, orthotics, and supplies competitive bidding program that can stand repeated use; is primarily and customarily used to serve a medical purpose; is generally not useful to a person in the absence of an illness or injury; is appropriate for use in the home; does not contain any prescription drug; and is not considered to be a specialty item, equipment, or service.

“Durable medical equipment supplier” means a person who sells, dispenses, delivers, or services durable medical equipment.

§321-C Licensing. It shall be unlawful for any person to operate as a durable medical equipment supplier that sells, dispenses, delivers, or services durable medical equipment to a consumer in the State without first obtaining a license. To receive a license, a durable medical equipment supplier shall attest and provide corroborating documentation to the department that the supplier:

- (1) Is in compliance with the business registration laws of the State and has all required tax identification numbers;
- (2) Is licensed and in good standing in the state in which its dispensing facilities are primarily located, if applicable, and complies with all applicable state and federal laws, rules, and standards;
- (3) Has designated a responsible agent or agents either in or out of the State who will be responsible for providing timely and satisfactory services to consumers in the State; provided that:
 - (A) The responsible agent or agents must be available to consumers in the State by phone during standard business hours in Hawaii to answer inquiries or resolve issues; and
 - (B) If the responsible agent or agents are not immediately available, then the supplier shall have a system capable of accepting and recording incoming phone inquiries; provided that the supplier shall respond no later than one business day after the inquiry is received;
- (4) Has implemented and maintains written procedures at each location for handling complaints and problems from all consumers, which includes a complaint file documenting complaints or problems and resolution of the complaints or problems; and
- (5) Will agree to notify consumers within two business days if the supplier cannot or will not provide the equipment, item, or service ordered; provided that suppliers may be exempt from this requirement if selling, dispensing, delivering, or servicing specialty equipment or items.

§321-D License fee. The department may assess a license fee of no more than \$350 on each durable medical equipment supplier who receives a license pursuant to section 321-C. The license fee collected shall be deposited into the office of health care assurance special fund pursuant to section 321-1.4.

§321-E Exemptions. Pharmacies licensed pursuant to chapter 461 are exempt from this part.

§321-F Rules. The department may adopt rules pursuant to chapter 91 to carry out the purpose of this part.

§321-G Severability. If any provision in this part or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect the other provisions or application of this part that can be given effect without the invalid provision or application, and to this end the provisions of this part are severable.”

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

“(a) There is established within the department of health, to be administered by the department of health, the office of health care assurance special fund into which shall be deposited moneys collected under section 321-11.5(b), license fees for the administration of the durable medical equipment supplier license program collected pursuant to section 321-D, and all administrative penalties imposed and collected by the office of health care assurance pursuant to section 321-20.

(b) Moneys in the special fund shall be expended by the department of health:

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- (1) To assist in offsetting operating costs and educational program expenses of the department of health's office of health care assurance; and
- (2) For the purpose of enhancing the capacity of office of health care assurance programs to:
 - (A) Improve public health outreach efforts, program and community development, and consultations to industries regulated; ~~and~~
 - (B) Educate the public, the staff of the department of health, ~~and~~ other departments within the State, as well as staff and providers of all health care facilities and agencies regulated; ~~and~~
 - (C) Administer and support the durable medical equipment supplier license program established pursuant to part

Not more than ~~[\$300,000]~~ \$327,000 of the special fund may be used during any fiscal year for the activities carried out by the office of health care assurance.

(c) Any amount in the special fund in excess of ~~[\$356,000]~~ \$387,500 on June 30 of each year shall be deposited into the general fund."

SECTION 4. Section 26H-6, Hawaii Revised Statutes, shall not apply to this Act.

SECTION 5. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect on January 1, 2017.

(Approved June 29, 2016.)