

MAR 15 2006

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# SENATE CONCURRENT RESOLUTION

REQUESTING THE HAWAII HEALTH SYSTEMS CORPORATION TO DISCLOSE  
OWNERSHIP INTERESTS IN ANY OF THE VENDORS WITH WHOM THE  
CORPORATION DOES BUSINESS.

1           WHEREAS, recently, there has been discussion of exempting  
2 the Hawaii Health Systems Corporation from the state procurement  
3 code, which may prove anti-competitive; and  
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5           WHEREAS, questions have also arisen that the Hawaii Health  
6 Systems Corporation may have an undisclosed ownership interest  
7 in one of the vendors with whom the Corporation does business;  
8 and  
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10           WHEREAS, in turn, this has raised the question of whether  
11 the Hawaii Health Systems Corporation is in compliance with the  
12 federal Health Care Anti-Kickback Act and the "safe harbor"  
13 regulations under the Medicare/Medicaid Anti-Kickback Law; and  
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15           WHEREAS, while activities outside of these safe harbors are  
16 not necessarily illegal, it is often unclear at what point  
17 conduct crosses the line between a legitimate practice and a  
18 violation of the Anti-Kickback Act; and  
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20           WHEREAS, the federal Health Care Anti-Kickback Act  
21 prohibits giving or receiving any remuneration to purchase,  
22 lease, order, arrange for, or recommend any drug that is  
23 reimbursable under a federal health care program; and  
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25           WHEREAS, however, there was concern that the broad sweep of  
26 the federal statute may prohibit vendors from paying fees to  
27 group purchasing organizations, which resulted in amendments to  
28 the statute specifically exempting vendor payments to group  
29 purchasing organizations; and  
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31           WHEREAS, in 1991, the Office of the Inspector General also  
32 issued a safe harbor rule protecting vendor payments to group  
33 purchasing organizations; and



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 2 WHEREAS, the amendments enacting the exemptions for vendor  
 3 payments were made because these arrangements are considered  
 4 beneficial and warrant protection under the Anti-Kickback Act;  
 5 and

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 7 WHEREAS, a shareback refers to quarterly cash returned to  
 8 health care group purchasing organizations as a reward for  
 9 participation based upon a percentage of the actual gross  
 10 dollars collected in connection with purchasing volumes and  
 11 payment of administrative fees; and

12  
 13 WHEREAS, in order to clarify and determine whether the  
 14 Hawaii Health Systems Corporation is in compliance with federal  
 15 law, the Corporation should make certain disclosures; now,  
 16 therefore,

17  
 18 BE IT RESOLVED by the Senate of the Twenty-third  
 19 Legislature of the State of Hawaii, Regular Session of 2006, the  
 20 House of Representatives concurring, that the Hawaii Health  
 21 Systems Corporation is requested to disclose its ownership  
 22 interests in any of the vendors with whom the Corporation does  
 23 business; and

24  
 25 BE IT FURTHER RESOLVED that the Hawaii Health Systems  
 26 Corporation is requested to include the following in its  
 27 disclosure:

- 28  
 29 (1) Name of vendor;  
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 31 (2) Description of ownership; and  
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 33 (3) Amount of any rebates, revenue sharing, shareback, or  
 34 similar type of revenue return program involved with  
 35 each vendor; and

36  
 37 BE IT FURTHER RESOLVED that the Hawaii Health Systems  
 38 Corporation is requested to provide this disclosure to the  
 39 Legislature and the Governor no later than twenty days prior to  
 40 the convening of the Regular Session of 2007; and

41  
 42 BE IT FURTHER RESOLVED that certified copies of this  
 43 Concurrent Resolution be transmitted to the President of the



1 Hawaii Health Systems Corporation, the Governor, and the  
2 Director of Health.

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OFFERED BY: Clarence K. Iwihikawa

