

MAR 15 2006

---

## SENATE 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  
4

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  
9

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  
14

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  
19

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  
24

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  
30

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  
34



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

5  
6 WHEREAS, a shareback refers to quarterly cash returned to  
7 health care group purchasing organizations as a reward for  
8 participation based upon a percentage of the actual gross  
9 dollars collected in connection with purchasing volumes and  
10 payment of administrative fees; and

11  
12 WHEREAS, in order to clarify and determine whether the  
13 Hawaii Health Systems Corporation is in compliance with federal  
14 law, the Corporation should make certain disclosures; now,  
15 therefore,

16  
17 BE IT RESOLVED by the Senate of the Twenty-third  
18 Legislature of the State of Hawaii, Regular Session of 2006,  
19 that the Hawaii Health Systems Corporation is requested to  
20 disclose its ownership interests in any of the vendors with whom  
21 the Corporation does business; and

22  
23 BE IT FURTHER RESOLVED that the Hawaii Health Systems  
24 Corporation is requested to include the following in its  
25 disclosure:

- 26  
27 (1) Name of vendor;  
28  
29 (2) Description of ownership; and  
30  
31 (3) Amount of any rebates, revenue sharing, shareback, or  
32 similar type of revenue return program involved with  
33 each vendor; and

34  
35 BE IT FURTHER RESOLVED that the Hawaii Health Systems  
36 Corporation is requested to provide this disclosure to the  
37 Legislature and the Governor no later than twenty days prior to  
38 the convening of the Regular Session of 2007; and

39



1 BE IT FURTHER RESOLVED that certified copies of this  
2 Resolution be transmitted to the President of the Hawaii Health  
3 Systems Corporation, the Governor, and the Director of Health.  
4  
5  
6

OFFERED BY: Clara K. Iwihara

