
A BILL FOR AN ACT

RELATING TO THE HAWAII HEALTH SYSTEMS CORPORATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the cost of medical
2 malpractice and hospital professional and general liability
3 coverage continues to rise and that stability in risk financing
4 is needed for the Hawaii health systems corporation and the
5 physicians serving this entity. The escalating costs of
6 premiums, lack of insurers providing coverage in Hawaii,
7 decreased limits of available coverage, and coverage
8 restrictions, make it important to establish a captive insurance
9 company to insure and control exposure to the liability risks of
10 the corporation.

11 The purpose of this Act is to:

12 (1) Provide that if the Hawaii health systems corporation
13 establishes a domestic captive insurance company to
14 provide medical malpractice and hospital professional
15 and general liability coverage for the corporation and
16 its facilities and the physicians serving therein, it
17 must submit a feasibility report to the Legislature, a



1 formalized financial plan to the director of finance
2 for approval, and a business plan to the insurance
3 commissioner; and

4 (2) Ensure that the composition of the corporation's board
5 of directors includes board members with the
6 appropriate knowledge and experience to oversee the
7 establishment and operation of a captive insurance
8 company.

9 SECTION 2. Chapter 323F, Hawaii Revised Statutes, is
10 amended by adding a new section to be appropriately designated
11 and to read as follows:

12 "§323F- Corporation board. (a) The corporation shall
13 be governed by a ten-member board of directors that shall carry
14 out the duties and responsibilities of the corporation.

15 (b) Eight members of the corporation board shall be
16 appointed by the governor as follows:

17 (1) Three members from a list of five persons submitted by
18 the president of the senate; provided that at least
19 one of these members shall have experience in the
20 insurance industry;

21 (2) Three members from a list of five persons submitted by
22 the speaker of the house of representatives; provided



1 that at least one of these members shall have
2 experience in the insurance industry; and
3 (3) Two members, one of whom shall be the chief executive
4 officer or chief financial officer of an insurer
5 licensed to do business in the state and shall serve
6 as a nonvoting member.

7 The director of health or the director's designee and the
8 insurance commissioner or the commissioner's designee shall
9 serve as ex officio, nonvoting members.

10 Any vacancy shall be filled in the same manner provided for
11 the original appointments. The corporation board shall elect
12 its own chair from among its members.

13 (c) The selection, appointment, and confirmation of any
14 appointed nominee shall be based on ensuring that corporation
15 board members have diverse and beneficial perspectives and
16 experiences and that they include, to the extent possible,
17 representatives of the medical, business, management, law,
18 finance, and health sectors, and patients or consumers. Members
19 of the corporation board shall serve without compensation but
20 may be reimbursed for actual expenses, including travel expenses
21 incurred in the performance of their duties.



1 (d) Any appointed member of the corporation board may be
2 removed for cause by the governor or for cause by vote of a two-
3 thirds majority of the corporation board's members then in
4 office. For purposes of this section, cause shall include
5 without limitation:

6 (1) Malfeasance in office;

7 (2) Failure to attend regularly called meetings;

8 (3) Sentencing for conviction of a felony, to the extent
9 allowed by section 831-2; or

10 (4) Any other cause that may render a member incapable or
11 unfit to discharge the duties required under this
12 chapter.

13 Filing nomination papers for elective office, appointment to
14 elective office, or conviction of a felony consistent with
15 section 831-3.1, shall automatically and immediately disqualify
16 a board member from office.

17 (e) No member of the corporation board shall be an
18 employee or vendor of the corporation, or an immediate family
19 member thereof. For purposes of this subsection, "immediate
20 family member" means a corporation board employee's or vendor's
21 spouse, child, parent, grandparent, or any related individual
22 who resides in the same household of the employee or vendor."



1 SECTION 3. Section 323F-4, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) All business of the corporation board shall be
4 conducted at a regular or special meeting at which a quorum is
5 present, consisting of at least a majority of the directors then
6 in office. Any action of the corporation board shall require
7 the affirmative vote of a majority of those present and voting
8 at the meeting; except that a vote of two-thirds of the members
9 of the corporation board then in office shall be required for
10 any of the following actions:

- 11 (1) Removal by the corporation board of one of its
12 members [~~, with the exception of the eleventh and~~
13 ~~twelfth members set forth in section 323F-3, who may~~
14 ~~only be removed pursuant to sections 323F-10 and 323F-~~
15 ~~10.5]~~;
- 16 (2) Amendment by the corporation board of its bylaws;
- 17 (3) Hiring or removing the chief executive officer of the
18 corporation; and
- 19 (4) Any other actions as provided by the corporation
20 bylaws."

21 SECTION 4. Section 323F-3, Hawaii Revised Statutes, is
22 repealed.



1 [~~"§323F-3 Corporation board. (a) The corporation shall~~
2 ~~be governed by a thirteen member board of directors which shall~~
3 ~~carry out the duties and responsibilities of the corporation.~~

4 ~~(b) Ten members of the corporation board shall be~~
5 ~~appointed by the governor as follows:~~

6 ~~(1) One member from region I who resides in the city and~~
7 ~~county of Honolulu;~~

8 ~~(2) One member from region II who resides in the county of~~
9 ~~Kauai;~~

10 ~~(3) One member from region III who resides in the county~~
11 ~~of Maui;~~

12 ~~(4) One member from region IV who resides in the eastern~~
13 ~~section of the county of Hawaii;~~

14 ~~(5) One member from region V who resides in the western~~
15 ~~section of the county of Hawaii;~~

16 ~~(6) One member from region II who resides in the county of~~
17 ~~Kauai or from region III who resides in the district~~
18 ~~of Hana or on the island of Lanai; provided that in no~~
19 ~~event shall the member be appointed from the same~~
20 ~~region for two consecutive terms; and~~

21 ~~(7) Four at large members who reside in the State.~~



1 ~~The eleventh member shall be the chairperson of the~~
2 ~~executive public health facility management advisory committee,~~
3 ~~who shall serve as an ex officio, voting member.~~

4 ~~The twelfth member, who shall serve as a voting member,~~
5 ~~shall be a physician with active medical staff privileges at one~~
6 ~~of the corporation's public health facilities. The physician~~
7 ~~member shall serve a term of two years. The initial physician~~
8 ~~member shall be from region II, and subsequent physician members~~
9 ~~shall come from regions IV, III, and V respectively. The~~
10 ~~physician member position shall continue to rotate in this~~
11 ~~order. The physician member shall be appointed to the~~
12 ~~corporation board by a simple majority vote of the members of~~
13 ~~the executive public health facility management advisory~~
14 ~~committee from a list of qualified nominees submitted by the~~
15 ~~public health facility management advisory committee for the~~
16 ~~region from which the physician member is to be chosen. If for~~
17 ~~any reason a physician member is unable to serve a full term,~~
18 ~~the remainder of that term shall be filled by a physician from~~
19 ~~the same region.~~

20 ~~The thirteenth member shall be the director of health or~~
21 ~~the director's designee, who shall serve as an ex officio,~~
22 ~~voting member.~~



1 ~~Appointments to the corporation board, with the exception~~
2 ~~of the chairperson of the executive public health facility~~
3 ~~management advisory committee and the regional physician member,~~
4 ~~shall be made by the governor, subject to confirmation by the~~
5 ~~senate pursuant to section 26-34. Prior to the transfer date,~~
6 ~~the public health facility management advisory committees~~
7 ~~appointed pursuant to section 323-66 for each county may~~
8 ~~recommend names to the governor for each position on the~~
9 ~~corporation board designated for a region which corresponds to~~
10 ~~its county. After the transfer date, the public health facility~~
11 ~~management advisory committees appointed pursuant to section~~
12 ~~323F-10 for each region may make such recommendations to the~~
13 ~~governor. The appointed board members shall serve for a term of~~
14 ~~four years; provided that upon the initial appointment of the~~
15 ~~first ten members:~~

16 ~~(1) Two at large members shall be appointed for a term of~~
17 ~~two years;~~

18 ~~(2) Three at large members shall be appointed for a term~~
19 ~~of three years; and~~

20 ~~(3) Five regional members shall be appointed for a term of~~
21 ~~four years.~~



1 ~~Any vacancy shall be filled in the same manner provided for the~~
2 ~~original appointments. The corporation board shall elect its~~
3 ~~own chair from among its members.~~

4 ~~(c) The selection, appointment, and confirmation of any~~
5 ~~nominee shall be based on ensuring that board members have~~
6 ~~diverse and beneficial perspectives and experiences and that~~
7 ~~they include, to the extent possible, representatives of the~~
8 ~~medical, business, management, law, finance, and health sectors,~~
9 ~~and patients or consumers. Members of the board shall serve~~
10 ~~without compensation but may be reimbursed for actual expenses,~~
11 ~~including travel expenses incurred in the performance of their~~
12 ~~duties.~~

13 ~~(d) Any member of the board may be removed for cause by~~
14 ~~the governor or for cause by vote of a two thirds majority of~~
15 ~~the board's members then in office. For purposes of this~~
16 ~~section, cause shall include without limitation:~~

- 17 ~~(1) Malfeasance in office;~~
18 ~~(2) Failure to attend regularly called meetings;~~
19 ~~(3) Sentencing for conviction of a felony, to the extent~~
20 ~~allowed by section 831-2; or~~



1 ~~(4) Any other cause that may render a member incapable or~~
2 ~~unfit to discharge the duties required under this~~
3 ~~chapter.~~

4 ~~Filing nomination papers for elective office or appointment to~~
5 ~~elective office, or conviction of a felony consistent with~~
6 ~~section 831-3.1, shall automatically and immediately disqualify~~
7 ~~a board member from office."]~~

8 SECTION 5. Upon the effective date of this Act, the
9 insurance commissioner or the commissioner's designee shall
10 immediately replace the chairperson of the executive public
11 health facility management advisory committee as an ex officio
12 member of the Hawaii health systems corporation board of
13 directors.

14 By December 31, 2007, the governor shall appoint the eight
15 appointed members of the board of directors of the Hawaii health
16 systems corporation pursuant to section 323F- , Hawaii Revised
17 Statutes, in section 2 of this Act; provided that:

18 (1) The terms of existing board members that are to expire
19 on or before June 30, 2007, shall be extended until
20 such time as the new members of the board have been
21 appointed pursuant to section 323F- , Hawaii Revised



1 Statutes, at which time the terms of the existing
2 board members shall expire;

3 (2) Upon the effective date of this Act, the governor
4 shall first appoint the seven voting board members set
5 forth in section 323F- (b)(1), (2), and (3). Each
6 such appointee shall immediately replace on an interim
7 basis the board member with the earliest appointment
8 to the board, subject to confirmation by the senate
9 during the regular session of 2008;

10 (3) Following the appointment of interim, voting board
11 members pursuant to paragraph (2), the governor shall
12 next appoint the nonvoting member set forth in section
13 323F- (b)(3), who shall immediately replace on an
14 interim basis the board member with the earliest
15 appointment to the board, subject to confirmation by
16 the senate during the regular session of 2008;

17 (4) Immediately after the replacement of appointed board
18 members pursuant to paragraphs (2) and (3), the term
19 of any board member appointed prior to the effective
20 date of this Act shall expire;



1 (5) On July 1, 2008, the term of each interim board member
2 whose appointment has been confirmed by the senate
3 during the regular session of 2008 shall commence; and

4 (6) If the appointment of any interim board member fails
5 to be confirmed by the senate, the governor shall
6 immediately appoint a replacement for that board
7 member pursuant to section 323F- , Hawaii Revised
8 Statutes, on an interim basis subject to confirmation
9 by the senate, until that seat is filled by an
10 appointee confirmed by the senate.

11 SECTION 6. No later than twenty days prior to the
12 convening of the regular session of 2008, the board of directors
13 of the Hawaii health systems corporation shall submit to the
14 legislature a report on the feasibility of establishing a
15 captive insurance company pursuant to section 323F-7(a)(20) to
16 provide medical malpractice and hospital professional and
17 general liability coverage for Hawaii health systems corporation
18 facilities and physicians.

19 SECTION 7. In organizing a captive insurance company
20 pursuant to section 323F-7(a)(20) to provide medical malpractice
21 and hospital professional and general liability coverage for



1 Hawaii health systems facilities and physicians, the Hawaii
2 health systems corporation shall:

- 3 (1) Submit a formalized financial plan to the director of
4 finance for review and approval; and
- 5 (2) Upon receiving the approval required by paragraph (1),
6 in addition to the documents required to be submitted
7 by article 19, chapter 431, submit to the insurance
8 commissioner a formalized business plan that includes
9 the establishment of a captive insurer board of
10 directors.

11 SECTION 8. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 9. This Act shall take effect on July 1, 2007,
14 except that the provisions of section 5 of this Act that extend
15 the terms of existing board members of the Hawaii health systems
16 corporation shall have retroactive application to implement the
17 provisions of that section.



S.B. NO. 1676
S.D. 2
H.D. 1

Report Title:

Hawaii Health Systems Corporation; Captive Insurer

Description:

Provides requirements for the creation of a captive insurance company by Hawaii health systems corporation (HHSC) to provide medical malpractice and hospital professional and general liability coverage to the corporation. Changes the composition of the HHSC board of directors. (SB1676 HD1)

SB1676 HD1 HMS 2007-3664

