

LATE

WRITTEN ONLY

TESTIMONY BY GEORGINA K. KAWAMURA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON HEALTH
ON
SENATE BILL NO. 1673, S.D. 2

March 20, 2009

RELATING TO THE HAWAII HEALTH SYSTEMS CORPORATION

Senate Bill No. 1673, S.D. 2, authorizes a facility or regional health care system under the Hawaii Health Systems Corporation to transition into a new legal entity; amends the maintenance of services requirements; requires the Department of Health to assume all community hospital liabilities accrued up to June 30, 1996; requires that the Hawaii Health Systems Corporation assume all subsequent liabilities; clarifies that the Hawaii Health Systems Corporation is responsible for payments into the Employees' Retirement System fund for its employees; requires commercial health plans to provide a minimum reimbursement level; authorizes special negotiating authority for Hawaii Health Systems Corporation with bargaining units; and authorizes criminal history record checks.

We are opposed to Sections 3, 4, 5, and 11 of this bill.

It is unclear what is meant by "the total amount of all liabilities and debts or other obligations" that the Department of Health shall assume on behalf of Hawaii Health Systems Corporation. Because there is no definition of what constitutes the "liabilities and debt," it is assumed that the liabilities could be significant as there are no limitations contained in the bill.

We do not support the proposed new section to Chapter 89, Hawaii Revised Statutes. The Hawaii Health Systems Corporation is already recognized as a separate

public employer jurisdiction by Section 89-2, Hawaii Revised Statutes. As such, the Hawaii Health Systems Corporation already has the authority to negotiate supplemental agreements to existing collective bargaining agreements under Section 89-6 (e), Hawaii Revised Statutes. While the Hawaii Health Systems Corporation has been operating under a revenue shortfall, collective bargaining agreements for the Hawaii Health Systems Corporation employees have been funded out of the State general fund. As long as the Hawaii Health Systems Corporation remains one of several public employer jurisdictions, it should not be recognized as a sole employer and as long as the State remains responsible for covering the Hawaii Health Systems Corporation's collective bargaining costs, the Governor should have a voice in collective bargaining negotiations.



LATE

**TESTIMONY OF THE STATE ATTORNEY GENERAL
TWENTY-FIFTH LEGISLATURE, 2009**

ON THE FOLLOWING MEASURE:

S.B. NO. 1673, S.D. 2, RELATING TO THE HAWAII HEALTH SYSTEMS CORPORATION.

BEFORE THE:

HOUSE COMMITTEE ON HEALTH

DATE: Friday, March 20, 2009 **TIME:** 9:00 AM

LOCATION: State Capitol, Room 329

TESTIFIER(S): Mark J. Bennett, Attorney General
or Andrea J. Armitage, Deputy Attorney General

Chair Yamane and Members of the Committee:

The Department of the Attorney General provides these comments regarding potential legal problems with this bill.

The purpose of this bill is to make changes to the laws that affect the Hawaii Health Systems Corporation (HHSC) and the regional system boards and their facilities to ensure the public facilities' viability. This is an omnibus bill that contains a number of changes to the law, including but not limited to:

(1) Modifying the law that requires legislative approval for HHSC facilities to reduce services by creating a different process that does not require legislative approval;

(2) Requiring the Department of Health to assume all liabilities and debts of HHSC incurred before HHSC was formed in 1996, and clarifying that HHSC is responsible for all liabilities incurred after that date. It also clarifies that HHSC shall bear sole responsibility for making all payments into the Employees' Retirement System beginning July 1, 1996;

(3) Requiring nongovernmental healthcare payors to pay critical access hospitals and federally qualified health centers consistent with the Medicare reimbursement rate and with the Medicaid reimbursement rate, respectively;

(4) Allowing HHSC and the regional system boards to negotiate their own memoranda of understanding for their employees with the appropriate bargaining unit negotiators;

(5) Allowing HHSC and regional systems to conduct criminal history record checks on employees;

(6) Allowing the regional system or individual facilities to transition into new legal entities; and

(7) Requiring each regional system board and each community hospital under the jurisdiction of HHSC to collaborate with community health centers in their regions to maximize funding from the state and federal governments.

There are a number of legal concerns with this bill. First, part III, sections 7 through 10, of the bill amends chapter 431, article 10A; chapter 432, article 1; chapter 432, article 2; and chapter 432D of the Hawaii Revised Statutes (HRS), by requiring nongovernmental healthcare payors to pay critical access hospitals and federally qualified health centers consistent with the Medicare reimbursement rate and with the Medicaid reimbursement rate, respectively.

This part of the bill appears to violate article III, section 14, of the Hawaii Constitution. That section requires each bill to include only one subject, which is to be expressed in its title. The title of this bill is "Relating to the Hawaii Health Systems Corporation." Part III changes the reimbursement rate for **all** critical access hospitals and federally qualified health centers, not just those owned by HHSC or its regional systems. Therefore, this section is unconstitutional within this measure. However, there are two bills that crossed over to the House that include the same provisions as part III of this bill, but have titles that encompass this particular subject. They are Senate Bill No. 1140, S.D. 2, Relating to Health Care, and Senate Bill No. 588, S.D. 1, Relating to Nongovernmental Health Plan Payments to Critical Access Hospitals and Federally Qualified Health Centers. Therefore, removing part III, sections 7 through 10, from this measure in order to comply with article III, section 14, of the Hawaii

Constitution will not stop changes to the reimbursement rates as long as one of those measures passes.

Second, on page 29, lines 15 - 20, the bill provides that "[n]otwithstanding any law to the contrary, including but not limited to section 27-1, and chapter 171 [HRS], any of the regional systems or individual facilities of the Hawaii health systems corporation is hereby authorized to transition into a new legal entity"

Section 27-1(3), HRS, provides that state functions include "[p]lanning, construction, improvement, maintenance, and operation of public hospitals and other public health and medical facilities." Considering the specificity of this provision, it would be prudent to also amend section 27-1, HRS, to allow facilities of the HHSC to transition from state facilities to private legal entities.

Third, on page 30, line 1, the bill states that the regional system or facility may transition into a "municipal facility." The term "municipal facility" is not defined in this bill or in the Hawaii Revised Statutes. Its meaning is unclear.

Fourth, on page 30, line 22, and page 31, lines 1 - 3, the bill states that "all liabilities of the regional system or facility related to collective bargaining contracts negotiated by the State, shall become the responsibility of the State[.]" This provision requires clarification as to what liabilities are included in this obligation; *i.e.*, whether this provision makes the State liable for **all** of the collective bargaining liabilities of the regional system or facility without condition, or whether it refers to specific liabilities.

Fifth, on page 31, line 4, the proposed bill states that funding and other provisions of the chapter shall continue during "the period of transition[.]" The phrase "period of transition" is not defined. There should be an explanation as to when the period of transition begins and when it ends.

Sixth, on page 31, lines 5 - 7, the bill states that during the period of transition, "the State shall continue to fund the provision of health care services provided for by the regional system or

individual facility[.]” The meaning of this provision is unclear. Currently regional systems and individual facilities are supported through their own funding mechanisms, and the Legislature may, of course, decide to make specific appropriations. This provision in the bill should make clear that it does not create any new financial obligation for the State to fund services provided by the regional systems or individual facilities.

Finally, section 15 would authorize any of the regional systems or individual facilities of HHSC to transition into a new legal entity. There are a number of issues that may be involved with a “transition” to another legal entity that are not clearly addressed by this measure. For example, what happens to the state employees if a facility “transitions” into another legal entity? If this bill is passed, we recommend that the impact of section 15, including personnel issues, be addressed.

LATE



March 20, 2009

The Honorable Ryan Yamane, Chair
The Honorable Scott Nishimoto, Vice Chair
House Committee on Health

Re: SB 1673 SD2 – Relating to the Hawaii Health Systems Corporation

Dear Chair Yamane, Vice Chair Nishimoto and Members of the Committee:

My name is Rick Jackson and I am President of the Hawaii Association of Health Plans (“HAHP”). HAHP is a non-profit organization consisting of seven (7) member organizations:

AlohaCare
Hawaii Medical Assurance Association
HMSA
Hawaii-Western Management Group, Inc.

MDX Hawai‘i
University Health Alliance
UnitedHealthcare

Our mission is to promote initiatives aimed at improving the overall health of Hawaii. We are also active participants in the legislative process. Before providing any testimony at a Legislative hearing, all HAHP member organizations must be in unanimous agreement of the statement or position.

HAHP appreciates the opportunity to testify in opposition to Part III of SB 1673 SD2 which would establish in statute a reimbursement level for private health plans to reimburse Critical Access Hospitals (CAHs) at no less than 101% of their self-reported costs and Federally Qualified Health Centers (FQHCs) at no less than their respective prospective payment system rates.

HAHP members agree with the federal government in its belief that CAHs and FQHCs provide vital services to segments of the community. In Hawaii, these facilities often provide services to QUEST and Medicaid populations who may have difficulty accessing health care in more traditional settings. That said, HAHP member organizations fundamentally disagree with the notion of setting reimbursement rates for providers of any type in employer sponsored health plans in Hawai‘i statute. We believe instead that rate negotiations which determine the cost of covered services in commercial insurance plans, which are in place today, are the appropriate method to deal with this subject.

Thank you for the opportunity to offer comments today.

Sincerely,

Rick Jackson
President

• AlohaCare • HMAA • HMSA • HWMG • MDX Hawaii • UHA • UnitedHealthcare •
HAHP c/o Howard Lee, UHA, 700 Bishop Street, Suite 300 Honolulu 96813
www.hahp.org