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## A BILL FOR AN ACT

RELATING TO HEALTH.

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

1           SECTION 1. (a) The legislature finds that the health and  
2 welfare of the residents of this State are threatened by:

3           (1) Unreasonable increases in the cost of health care  
4           services;

5           (2) A fragmented system of health care, resulting from the  
6           lack of integrated and coordinated health care  
7           services;

8           (3) Unequal access to primary and preventive care; and

9           (4) The lack of a comprehensive and coordinated health  
10           information system to gather and disseminate data to  
11           promote the availability of cost-effective, high-  
12           quality health care services and to permit effective  
13           health planning and analysis of utilization, clinical  
14           outcomes, and cost and risk factors.

15           (b) In order to address these issues, the legislature  
16 finds that there is a need to:

17           (1) Gather information on health care costs;

18           (2) Develop a system of health care cost control; and



- 1 (3) Create an entity of state government with the  
2 authority to:
- 3 (A) Ensure the containment of health care costs;
  - 4 (B) Gather and disseminate health care information;
  - 5 (C) Analyze and report on changes in the health care  
6 delivery system as a result of evolving market  
7 forces, including the implementation of managed  
8 care; and
  - 9 (D) Ensure that a rate regulation program and an  
10 information system serve to promote cost  
11 containment, health care access, and quality of  
12 primary and preventive care.

13 (c) The purpose of this Act is to protect the health and  
14 well-being of the residents of this State by guarding against  
15 unreasonable loss of economic resources as well as to ensure the  
16 continuation of appropriate access to cost-effective, high-  
17 quality health care services.

18 SECTION 2. The Hawaii Revised Statutes is amended by  
19 adding a new chapter to be appropriately designated and to read  
20 as follows:

21 "CHAPTER

22 HAWAII HEALTH CARE AUTHORITY



1           §   -1 **Definitions.** As used in this chapter, unless the  
2 context clearly requires otherwise:

3           "Authority" means the Hawaii health care authority  
4 established by this chapter.

5           "Board" means the board of directors of the Hawaii health  
6 care authority and any successor thereto.

7           "Charges" means the economic value, established for  
8 accounting purposes, of the goods and services that a hospital  
9 provides for all classes of purchasers.

10          "Class of purchaser" means a group of potential hospital  
11 patients with common characteristics affecting the way in which  
12 their hospital care is financed. Examples of classes of  
13 purchasers include medicare beneficiaries, recipients of public  
14 assistance, members of health maintenance organizations, and  
15 other groups as defined by the board.

16          "Health care provider" means a person, partnership,  
17 corporation, facility, hospital, or institution licensed,  
18 certified, or authorized by law to provide professional health  
19 care service in this State to an individual during the  
20 individual's medical, remedial, or behavioral health care,  
21 treatment, or confinement. "Health care provider" does not  
22 include the private office practice of one or more health care



1 professionals licensed, certified, registered, or otherwise  
2 authorized to practice in this State.

3 "Health care services" means the same as in section 334B-2.

4 "Hospital" means a private institution with an organized  
5 medical staff, regulated under section 321-11(10), that admits  
6 patients for inpatient care, diagnosis, observation, and  
7 treatment. The term does not include any state hospital,  
8 including any state mental health facility or long-term care  
9 facility, or any health facility under chapter 323F.

10 "Purchaser" means a consumer of patient care services, a  
11 natural person who is directly or indirectly responsible for  
12 payment for patient care services rendered by a health care  
13 provider, but does not include third-party payors.

14 "Rates" means all value given or money payable to health  
15 care providers for health care services, including fees,  
16 charges, and cost reimbursements.

17 "Records" means accounts, books, and other data related to  
18 health care costs at health care facilities subject to this  
19 chapter that do not include privileged medical information,  
20 individual personal data, confidential information, or other  
21 protected health information, the disclosure of which is



1 prohibited by any state or federal law, and information, the  
2 disclosure of which would be an invasion of privacy.

3 "Related organization" means an organization, whether  
4 publicly owned, nonprofit, tax-exempt, or for profit, related to  
5 a health care provider through common membership, governing  
6 bodies, trustees, officers, stock ownership, family members,  
7 partners, or limited partners including subsidiaries,  
8 foundations, related corporations, and joint ventures. For the  
9 purposes of this definition, "family members" means siblings,  
10 whether by the whole or half blood, spouses, ancestors, and  
11 lineal descendants.

12 "Third-party payor" means any person or government entity  
13 responsible for payment for patient care services rendered by  
14 health care providers.

15 § -2 **Hawaii health care authority; establishment; board;**  
16 **staff.** (a) There is established the Hawaii health care  
17 authority, which shall be a body corporate and a public  
18 instrumentality of the State and placed within the department of  
19 health for administrative purposes only.

20 (b) The authority shall be headed by a board of directors  
21 consisting of three voting members from the private sector, who



1 shall be appointed by the governor as provided in section 26-34;  
2 provided that:

3 (1) One member shall have a background in health care  
4 finance or economics;

5 (2) One member shall have previous employment experience  
6 in human services, business administration, or  
7 substantially related fields; and

8 (3) One member shall be a consumer of health care services  
9 who has a demonstrated interest in health care issues.

10 (c) The board shall elect a chairperson from among its  
11 members.

12 (d) Two voting members shall constitute a quorum, whose  
13 affirmative vote shall be necessary to give effect to all  
14 actions by the authority. A vacancy in the board shall not  
15 affect the right or duty of the remaining board members to  
16 function as a board.

17 (e) The members shall serve without compensation, but  
18 shall be reimbursed for expenses, including travel expenses,  
19 necessary for the performance of their duties.

20 (f) The governor shall appoint, without regard to chapter  
21 76, an executive director who shall serve at the pleasure of the  
22 governor. The executive director's salary shall be within the



1 range of salaries paid directors of the departments of the state  
2 government. The executive director shall be a member of the  
3 state employees' retirement system and shall be eligible to  
4 receive the benefits of any state or federal employee benefit  
5 program generally applicable to officers and employees of the  
6 State.

7 (g) The authority may employ persons who are exempt from  
8 chapters 76 and 89 to perform and execute the functions of the  
9 authority.

10 (h) No person may serve as a member of the board or as an  
11 employee thereof while the person is in the employ of, or holds  
12 any official relation to, any hospital or health care provider  
13 subject to this chapter, or has any pecuniary interest therein.

14 (i) All board members and employees shall be subject to  
15 chapter 84; provided that no board member or employee may:

16 (1) Be a candidate for or hold public office or be a  
17 member of any political committee while acting as a  
18 board member or employee;

19 (2) Receive anything of value, either directly or  
20 indirectly, from any third-party payor or health care  
21 provider; or



1 (3) Accept employment with any hospital or health care  
2 provider subject to the jurisdiction of the board in  
3 violation of chapter 84, part II.

4 § -3 Information gathering and coordination; health care  
5 information and data advisory group. (a) The board shall:

6 (1) Coordinate and oversee the health care information and  
7 data collection of state agencies;

8 (2) Lead state agencies' efforts to make the best use of  
9 emerging technology to effect the expedient and  
10 appropriate exchange of health care information and  
11 data, including patient records and reports; and

12 (3) Coordinate database development, analysis, and  
13 reporting to facilitate cost management, utilization  
14 review, and quality assurance efforts by state payor  
15 and regulatory agencies, insurers, consumers,  
16 providers, and other interested parties.

17 (b) The board shall:

18 (1) With the cooperation of state agencies collecting  
19 health care information and data:

20 (A) Develop an integrated system for the efficient  
21 collection, responsible use, and dissemination of  
22 the data; and





1 (B) Facilitate and support the development of  
2 statewide health information systems that will  
3 allow for the electronic transmittal of all  
4 health information and claims processing  
5 activities of state agencies within the State,  
6 and that will coordinate the development and use  
7 of electronic health information systems within  
8 state government;

9 (2) Establish minimum requirements and issue reports  
10 relating to information systems of all state health  
11 programs, including simplifying and standardizing  
12 forms, establishing information standards and reports  
13 for capitated managed care programs to be managed by  
14 the insurance commissioner; and

15 (3) Develop a comprehensive system to collect health care  
16 information and data on ambulatory care provided to  
17 persons in this State.

18 The board may gain access to any health-related database in  
19 state government for the purposes of fulfilling its duties;  
20 provided that the use and dissemination of information from any  
21 database to which the board gains access shall be subject to the  
22 confidentiality provisions applicable to that database.



- 1 (c) The board's staff shall gather information on:
- 2 (1) Health care cost containment efforts, including the
- 3 provision of alternative delivery systems, prospective
- 4 payment systems, alternative rate-making methods, and
- 5 programs of consumer education. The board shall pay
- 6 particular attention to the economic, quality of care,
- 7 and health status impact of these efforts on
- 8 purchasers or classes of purchasers, particularly the
- 9 elderly and those on low or fixed incomes; and
- 10 (2) State-of-the-art advances in medical technology, the
- 11 cost effectiveness of these advances and their impact
- 12 on advances in health care services and management
- 13 practices, and any other state-of-the-art concepts
- 14 relating to health care cost containment, health care
- 15 improvement, or other issues the board finds relevant
- 16 and directs staff to investigate.

17 The board staff shall prepare and keep a register of this

18 information and update it on an annual basis.

- 19 (d) To advise the board in its efforts under this section,
- 20 the board shall create a health care information and data
- 21 advisory group and appoint one of the board's members as
- 22 chairperson of the group. The group shall be composed of



1 representatives of consumers, businesses, health care providers,  
2 payors, and state agencies. The health care information and  
3 data advisory group shall assist the board in developing  
4 priorities and protocols for health care information and data  
5 collection and the development and reform of health information  
6 systems provided under this section.

7 The members of the health care information and data  
8 advisory group shall serve without compensation, but shall be  
9 reimbursed for expenses, including travel expenses, necessary  
10 for the performance of their duties.

11 § -4 Powers generally. In addition to the other powers  
12 granted to the board by this chapter, the board may:

- 13 (1) Sue and be sued;
- 14 (2) Have a seal and alter the same at pleasure;
- 15 (3) Make and execute contracts and all other instruments  
16 necessary or convenient for the exercise of its powers  
17 and functions under this chapter;
- 18 (4) Make and alter bylaws for its organization and  
19 internal management;
- 20 (5) Adopt rules in accordance with chapter 91 with respect  
21 to its projects, operations, properties, and  
22 facilities;



- 1           (6) Through its executive director, represent the  
2           authority in communications with the governor and the  
3           legislature;
- 4           (7) Through its executive director, allocate space or  
5           spaces to be occupied by the authority and appropriate  
6           staff;
- 7           (8) Hold public hearings, conduct investigations, and  
8           require the filing of information relating to matters  
9           affecting the costs of health care services subject to  
10          this chapter, and subpoena witnesses, papers, records,  
11          documents, and all other necessary or relevant data.  
12          The board may administer oaths or affirmations in any  
13          hearing or investigation;
- 14          (9) Apply for, receive, and accept gifts, payments, and  
15          other funds and advances from the United States, the  
16          State, or any other governmental body or agency, or  
17          from any other private or public corporation or person  
18          (with the exception of hospitals subject to this  
19          chapter, or associations representing them, doing  
20          business in this State, except in accordance with  
21          section     -5), and enter into agreements with respect  
22          thereto, including the undertaking of studies, plans,



1           demonstrations, or projects. Any gifts or payments  
2           that may be received or any agreements that may be  
3           entered into shall be used or formulated only so as to  
4           pursue legitimate, lawful purposes of the board, and  
5           shall in no respect inure to the private benefit of a  
6           board member, staff member, donor, or contracting  
7           party;

8           (10) Lease, rent, acquire, purchase, own, hold, construct,  
9           equip, maintain, operate, sell, encumber, and assign  
10          rights or dispose of any property, real or personal,  
11          consistent with the objectives of the board as set  
12          forth in this chapter; provided that the acquisition  
13          or purchase of real property or construction of  
14          facilities shall be consistent with planning by the  
15          state comptroller and subject to the approval of the  
16          legislature; and

17          (11) Exercise, subject to limitations or restrictions  
18          imposed in this chapter, all other powers that are  
19          reasonably necessary or essential to carry out the  
20          express objectives and purposes of this chapter.

21          §   -5   **Health care cost review fund; board expenses;**  
22   **hospital assessments.** (a) There is created the health care



1 cost review fund within the state treasury. Moneys in the fund  
2 shall be expended only upon appropriation by the legislature for  
3 purposes consistent with this chapter. Any balance remaining in  
4 the fund at the end of any fiscal year shall not revert to the  
5 general fund but shall remain in the fund, and the balance of  
6 moneys remaining in the fund shall be expended only after  
7 appropriation by the legislature in ensuing fiscal years.

8 (b) The board shall prepare an annual budget for  
9 submission to the governor and the legislature, which shall  
10 include all sums necessary to support the activities of the  
11 board and its staff.

12 (c) Each hospital subject to this chapter shall be  
13 assessed by the board on a pro rata basis using the gross  
14 revenues of each hospital as reported pursuant to section -11  
15 as the measure of the hospital's obligation. The amount of the  
16 fee shall be determined by the board, except that in no case  
17 shall the hospital's obligation exceed one-tenth of one per cent  
18 of its annual gross revenue. The fees shall be paid on July 1  
19 of each year into the health care cost review fund.

20 (d) Each hospital's assessment shall be treated as an  
21 allowable expense by the board.



1 (e) The board may withhold rate approvals and certificates  
2 of need if any assessment remains unpaid, unless exempted by  
3 law.

4 § -6 **Annual report.** The board, within thirty days of  
5 the close of the fiscal year, or from time to time as requested  
6 by the legislature, shall prepare and transmit to the governor  
7 and the legislature a report of its operations and activities  
8 for the preceding fiscal year. The report shall include  
9 summaries of all reports made by the hospitals subject to this  
10 chapter, together with facts, suggestions, and policy  
11 recommendations the board considers necessary. The board, after  
12 rate review and determination in accordance with this chapter,  
13 shall include rate schedules in its annual report or other  
14 reports as may be requested by the legislature.

15 § -7 **Jurisdiction.** (a) Notwithstanding any other law  
16 to the contrary, the jurisdiction of the board as to rates for  
17 health care services shall extend to all hospitals as defined in  
18 section -1 doing business in the State.

19 (b) The board shall have jurisdiction over costs or  
20 charges associated with individual health care providers or  
21 health care provider groups providing inpatient or outpatient  
22 services under a contractual agreement with hospitals, excluding



1 simple admitting privileges. The jurisdiction of the board  
2 shall not extend to the regulation of rates of private health  
3 care providers or health care groups providing inpatient or  
4 outpatient services under a contractual agreement with hospitals  
5 when the provision of that service is outside the hospital  
6 setting, and shall not extend to the regulation of rates of all  
7 other private health care providers practicing outside the  
8 hospital setting; provided that the practice outside the  
9 hospital setting is not found to be an evasion of the purposes  
10 of this chapter.

11       § -8 **Hearings; administrative procedures; hearings**  
12 **examiner; subpoenas; judicial review.** (a) The board may  
13 conduct hearings as it deems necessary for the performance of  
14 its functions and shall hold hearings when required by this  
15 chapter or upon a written demand by a person aggrieved by any  
16 act or failure to act by the board or by any rule or order of  
17 the board. All hearings of the board shall be announced in a  
18 timely manner and shall be open to the public except as may be  
19 necessary to conduct business of an executive nature.

20       (b) All pertinent administrative procedure provisions of  
21 chapter 91 shall apply to and govern a hearing except as  
22 specifically stated to the contrary in this chapter.





1 (c) Any hearing may be conducted by members of the board  
2 or by a hearings examiner appointed for that purpose. Any  
3 member of the board may issue subpoenas and subpoenas duces  
4 tecum, which shall have the same force and effect and shall be  
5 served in the same manner as if issued by a court of this State.

6 (d) Notwithstanding any other state law, when a hospital  
7 alleges that a factual determination made by the board is  
8 incorrect, the burden of proof shall be upon the hospital to  
9 demonstrate that the determination, in light of the total  
10 record, is not supported by substantial evidence. The burden of  
11 proof shall remain with the hospital in all cases.

12 (e) After any hearing, after due deliberation and in  
13 consideration of all the testimony, evidence, and the total  
14 record made, the board shall render a decision in writing. The  
15 written decision shall be accompanied by findings of fact and  
16 conclusions of law, and the copy of the decision and  
17 accompanying findings and conclusions shall be served by  
18 certified mail, return receipt requested, upon the party  
19 demanding the hearing, and upon the attorney of record, if any.

20 (f) Any interested individual, group, or organization  
21 shall be recognized as affected parties upon written request  
22 from the individual, group, or organization. Affected parties



1 shall have the right to bring relevant evidence before the board  
2 and testify. Affected parties shall have equal access to  
3 records, testimony, and evidence before the board, and shall  
4 have equal access to the expertise of the board's staff.

5 (g) Any person aggrieved by a final decision and order of  
6 the board in a contested case, as defined in chapter 91, shall  
7 be entitled to judicial review by the circuit court of the  
8 circuit in which the board making the final decision and order  
9 has jurisdiction. The review shall be as provided by chapter  
10 91.

11 § -9 **Failure or refusal to comply.** (a) Whenever a  
12 hospital fails or refuses to furnish to the board any record or  
13 information requested under this chapter or otherwise fails or  
14 refuses to comply with the requirements of this chapter or any  
15 reasonable rule adopted by the board under this chapter, the  
16 board may make and enter an order of enforcement and serve a  
17 copy thereof on the hospital in question by certified mail,  
18 return receipt requested.

19 (b) The hospital shall be granted a hearing on the order  
20 of enforcement if, within twenty days after receipt of a copy  
21 thereof, it files with the board a written demand for hearing.  
22 A demand for hearing shall operate automatically to stay or



1 suspend the execution of the order of enforcement, with the  
2 exception of orders relating to rate increases.

3 (c) Upon receipt of a written demand for a hearing, the  
4 board shall set a time and place for the hearing not less than  
5 ten days and no more than thirty days thereafter. Any scheduled  
6 hearing may be continued by the board upon motion for good cause  
7 shown by the hospital demanding the hearing.

8 § -10 **Uniform system of financial reporting.** (a) The  
9 board shall develop and specify a uniform system of reporting  
10 utilization, accounting, and financial reporting, including cost  
11 allocation methods by which hospitals shall record their  
12 revenues, income, expenses, capital outlays, assets,  
13 liabilities, and units of service. This development and  
14 specification process shall be conducted in a manner determined  
15 by the board to be most efficient for this purpose. Each  
16 hospital shall adopt this uniform system for the purpose of  
17 reporting utilization, costs, and revenues to the board  
18 effective for the fiscal year beginning twelve months from the  
19 effective date of this chapter.

20 (b) The board may provide for modification in the  
21 accounting and reporting system in order to correctly reflect  
22 differences in the scope or type of services and financial



1 structures of the various categories, sizes, and types of  
2 hospitals, in a manner consistent with the purposes of this  
3 chapter.

4 (c) To the extent that funds are available, the board may  
5 provide technical assistance, upon request, to a hospital that  
6 demonstrates sufficient need for assistance in the establishment  
7 of a data collection system.

8 (d) The board, after consultation with health care  
9 providers, purchasers, classes of purchasers, and third-party  
10 payors, shall adopt a mandatory form for reporting to the board,  
11 at its request, medical diagnosis, treatment, and other services  
12 rendered to each purchaser by health care providers subject to  
13 this chapter.

14 (e) Following a public hearing, the board shall establish  
15 a program to minimize the administrative burden on hospitals by  
16 eliminating unnecessary duplication of financial and operational  
17 reports. To the extent possible, notwithstanding any other law,  
18 the board shall coordinate reviews, reports, and inspections  
19 performed by federal, state, local, and private agencies.

20 § -11 **Annual health care provider report.** (a) Every  
21 health care provider subject to this chapter shall file with the  
22 board all reports required by the board, including the following



1 financial statements or reports for the prior fiscal year in a  
2 form and at intervals specified by the board, but at least  
3 annually:

- 4 (1) A balance sheet detailing the assets, liabilities, and  
5 net worth;
- 6 (2) A statement of income and expenses;
- 7 (3) A statement of services rendered and services  
8 available; and
- 9 (4) Any other reports that the board may require;

10 provided that if more than one licensed hospital is operated by  
11 the reporting organization, the information shall be reported  
12 for each hospital separately.

13 (b) Every related organization shall file with the board,  
14 within thirty days from the effective date of this chapter, the  
15 following financial statements or reports for each of its three  
16 prior fiscal years:

- 17 (1) A balance sheet detailing the assets, liabilities, and  
18 net worth;
- 19 (2) A statement of income and expenses;
- 20 (3) A statement of cash flows; and
- 21 (4) Any other information that the board may require.



1 After the initial filing of the financial information required  
2 by this subsection, every related organization shall thereafter  
3 file annual financial reports with the board in a form specified  
4 by the board.

5 (c) The annual financial statements filed pursuant to this  
6 section shall be prepared in accordance with the uniform system  
7 of financial reporting adopted under section -10. The board  
8 may require attestations from responsible officials of the  
9 hospitals or related organizations that the reports, to the best  
10 of their knowledge, were prepared truthfully and in accordance  
11 with the prescribed system of accounting and reporting.

12 (d) All reports filed under this chapter, except personal  
13 medical information personally identifiable to a purchaser and  
14 any tax return, shall be open to public inspection and available  
15 for examination at the offices of the board during regular  
16 business hours.

17 (e) If further investigation is deemed necessary or  
18 desirable to verify the accuracy of any information set forth in  
19 any statement, schedule, or report filed by a health care  
20 provider or related organization under this section, the board  
21 may require a full or partial audit of the records of the health  
22 care provider or related organization.



1           §   -12   **Rate-setting powers generally.**   (a)   The board  
2   may:

3           (1)   Initiate reviews and investigations of hospital rates  
4               and establish and approve those rates;

5           (2)   Initiate reviews and investigations of hospital rates  
6               for specific services and the component factors that  
7               determine those rates;

8           (3)   Initiate reviews and investigations of hospital  
9               budgets and the specific components of those budgets;  
10              and

11          (4)   Approve or disapprove hospital rates and budgets,  
12               taking into consideration the criteria set forth in  
13               section     -13.

14          (b)   In the interest of promoting the most efficient and  
15   effective use of hospital services, the board may adopt and  
16   approve alternative methods of rate determination.  The board  
17   may also adopt charges and payments of an experimental nature  
18   that are in the public interest and consistent with the purpose  
19   of this chapter.

20          §   -13   **Rate determination.**   (a)   Upon commencement of  
21   review activities, no rates may be approved by the board or  
22   payment made for health care services provided by hospitals



1 under the jurisdiction of the board by any purchaser or third-  
2 party payor to or on behalf of any purchaser or class of  
3 purchasers unless:

4 (1) The costs of the hospital's services are reasonably  
5 related to the services provided and the rates are  
6 reasonably related to the costs;

7 (2) The rates are equitably established among all  
8 purchasers or classes of purchasers within a hospital  
9 without discrimination unless federal or state  
10 statutes, rules, or regulations conflict with this  
11 requirement. After the effective date of this  
12 chapter, a summary of every proposed contract or  
13 amendment to any existing contract for the payment of  
14 patient care services between a purchaser or third-  
15 party payor and a hospital shall be filed by the  
16 hospital for review by the board. The reviews shall  
17 be undertaken no less frequently than each calendar  
18 quarter.

19 (A) If the contract establishes a discount to the  
20 purchaser or third-party payor, it shall not take  
21 effect until approved by the board. For the  
22 purposes of this chapter, a risk-bearing contract





1 is reviewable as a discount contract and the  
2 amount computed as the discount percentage by the  
3 provider on the board shall be the approved  
4 amount of the discount. The difference, if any,  
5 between the actual discount percentage and amount  
6 and the approved amount, shall not be considered  
7 for rate-setting purposes;

8 (B) The board may adopt rules in accordance with  
9 chapter 91 that establish the criteria for review  
10 of discount contracts providing that:

11 (i) No discount shall be approved by the board  
12 that constitutes an amount below the cost to  
13 the hospital;

14 (ii) The cost of any discount contained in the  
15 contract shall not be shifted to any other  
16 purchaser or third-party payor;

17 (iii) The discount shall not result in a decrease  
18 in the hospital's average number of  
19 medicare, medicaid, or uncompensated care  
20 patients served during the previous three  
21 fiscal years; and



1 (iv) The discount is based upon criteria that  
2 constitute a quantifiable economic benefit  
3 to the hospital.

4 The board may define by rule what constitutes  
5 "cost" in clauses (i) and (ii); "purchaser" in  
6 clause (ii); and "economic benefit" in clause  
7 (iv). Any rules adopted pursuant to this  
8 subsection shall be subject to chapter 91, but  
9 shall be exempt from the public notice, public  
10 hearing, and gubernatorial approval requirements  
11 of chapter 91. All information submitted to the  
12 board shall be certified by the hospital's chief  
13 executive officer and chief financial officer as  
14 to its accuracy and truthfulness;

15 (3) The rates of payment for medicaid are reasonable and  
16 adequate to meet the costs that must be incurred by  
17 efficiently and economically operated hospitals  
18 subject to this chapter. The rates shall take into  
19 account the situation of hospitals that serve  
20 disproportionate numbers of low-income patients and  
21 assure that individuals eligible for medicaid have  
22 reasonable access, taking into account geographic



1 location and reasonable travel time, to inpatient  
2 hospital services of adequate quality;

3 (4) The rates are equitable in comparison to prevailing  
4 rates for similar services in similar hospitals as  
5 determined by the board; and

6 (5) In no event shall a hospital's receipt of emergency  
7 disaster funds from the federal government be included  
8 in the hospital's gross revenues for either rate-  
9 setting or assessment purposes.

10 (b) In the interest of promoting efficient and appropriate  
11 utilization of hospital services, the board shall review and  
12 make findings on the appropriateness of projected gross revenues  
13 for a hospital as the revenues relate to charges for services  
14 and anticipated incidence of service.

15 (c) When applying the criteria set forth in subsections  
16 (a) and (b), the board shall consider all relevant factors,  
17 including:

18 (1) The economic factors in the hospital's area;

19 (2) The hospital's efforts to share services;

20 (3) The hospital's efforts to employ less costly

21 alternatives for delivering substantially similar



- 1 services or producing substantially similar or better  
2 results in terms of the health status of those served;
- 3 (4) The efficiency of the hospital as to cost and delivery  
4 of health care;
- 5 (5) The quality of care;
- 6 (6) Occupancy level;
- 7 (7) A fair return on invested capital, not otherwise  
8 compensated for;
- 9 (8) The nonprofit or for-profit status of the hospital;
- 10 (9) Costs of education; and
- 11 (10) Income from any investments and assets not associated  
12 with patient care, including parking garages,  
13 residences, office buildings, and income from related  
14 organizations and restricted funds whether or not  
15 associated with patient care.
- 16 (d) Wages, salaries, and benefits paid to or on behalf of  
17 nonsupervisory employees of hospitals subject to this chapter  
18 are not subject to review unless the board first determines that  
19 the wages, salaries, and benefits may be unreasonably or  
20 uncustomarily high or low. This exemption shall not apply to  
21 accounting and reporting requirements contained in this chapter,  
22 nor to any that may be established by the board. For the



1 purposes of this section, the term "nonsupervisory employees"  
2 includes employees of hospitals subject to this chapter who are  
3 paid on an hourly basis.

4 (e) Any licensing agency empowered to suggest or mandate  
5 changes in buildings or operations of hospitals shall give  
6 notice to the board together with any findings.

7 (f) A hospital shall file a complete rate application with  
8 the board on an annual basis at least seventy-five days prior to  
9 the beginning of the hospital's fiscal year. If the application  
10 is filed and determined to be complete by the board sixty days  
11 prior to the beginning of the hospital's fiscal year, and no  
12 hearing is requested on the application, the board shall set the  
13 rates in advance of the year during which they apply and shall  
14 not adjust the rates for costs actually incurred; provided that:

15 (1) If the board does not establish rates by the beginning  
16 of the hospital's fiscal year, and a hearing has not  
17 been requested, the board shall establish rates  
18 retroactively to the beginning of the hospital's  
19 fiscal year; and

20 (2) If the board does not establish rates by the beginning  
21 of the hospital's fiscal year, and a hearing has been



1 requested, the board may establish rates retroactively  
2 to the beginning of the fiscal year.

3 This subsection shall not apply to the procedure set forth in  
4 section -14(c).

5 (g) No hospital may charge for services at rates in excess  
6 of those established in accordance with the requirements of and  
7 procedures set forth in this chapter.

8 (h) Notwithstanding any other provision of this chapter,  
9 the board shall approve all requests for rate increases by  
10 hospitals that are licensed for one hundred or fewer beds and  
11 that are not located in a standard metropolitan statistical area  
12 in which the rate of increase is equal to or less than the  
13 lowest rate of inflation as established by a recognized  
14 inflation index for either the national or regional hospital  
15 industry. The board, by rules adopted pursuant to chapter 91,  
16 may impose reporting requirements to ensure that a hospital does  
17 not exceed the rate of increases permitted in this section.

18 (i) Notwithstanding any other provision of this chapter,  
19 the board shall develop an expedited review process applicable  
20 to all hospitals licensed for more than one hundred beds or that  
21 are located in a standard metropolitan statistical area for rate



1 increase requests that may be based upon a recognized inflation  
2 index for the national or regional hospital industry.

3 (j) The board may require hospitals to file any additional  
4 information that it deems necessary to evaluate a market-driven  
5 system of rate setting.

6 § -14 Procedure for obtaining initial rate schedule;  
7 adjustments and revisions of rate schedules. (a) No hospital  
8 subject to this chapter may change or amend its schedule of  
9 rates except in accordance with the following procedures:

10 (1) Any request for a change in rate schedules or other  
11 changes shall be filed in writing to the board with  
12 any supporting data that the hospital seeking to  
13 change its rates considers appropriate, in the form  
14 prescribed by the board. If necessary, the board may  
15 hold a public hearing on the proposed change no later  
16 than forty-five days after receipt of the notice. The  
17 review of the proposed change may not be completed  
18 later than one hundred eighty days from the date of  
19 filing to the date of the board's order. If the board  
20 fails to complete its review of the proposed change  
21 within that period, the proposed change shall be  
22 deemed to have been approved by the board. Any



1 proposed change shall go into effect upon the date  
2 specified in the order. The review period is deemed  
3 complete on the date of the board's final order,  
4 notwithstanding an appeal of the order by an affected  
5 party;

6 (2) Each hospital shall establish, in a written report  
7 that shall be incorporated into each proposed rate  
8 application, that it has thoroughly investigated and  
9 considered:

10 (A) The economic and social impact of any proposed  
11 rate increase, or service decrease, on hospital  
12 cost containment and upon health care purchasers,  
13 including classes of purchasers, such as the  
14 elderly and low- and fixed-income persons;

15 (B) State-of-the-art advances in health care cost  
16 containment, hospital management, and rate  
17 design, as alternatives to or in mitigation of  
18 any rate increase or service decrease. The  
19 written report shall describe the state-of-the-  
20 art advances considered and shall contain  
21 specific findings as to each consideration,





- 1 including the reasons for the adoption or  
2 rejection;
- 3 (C) Implementation of cost control systems, including  
4 the elimination of unnecessary or duplicative  
5 facilities and services, promotion of alternative  
6 forms of care, and other cost control mechanisms;
- 7 (D) Initiatives to create alternative delivery  
8 systems; and
- 9 (E) Efforts to encourage third-party payors,  
10 including insurers and health maintenance  
11 organizations, to control costs, including a  
12 combination of education, persuasion, financial  
13 incentives, and disincentives to control costs;  
14 and
- 15 (3) If the board modifies the request of a hospital for a  
16 change in its rates so that the hospital obtains only  
17 a partial increase in its rate schedule, the hospital  
18 shall have the right to accept the benefits of the  
19 partial increase in rates and charge its purchasers  
20 accordingly without, in any way, adversely affecting  
21 or waiving its right to appeal that portion of the



1 decision and order of the board that denied the  
2 remainder of the requested rate increase.

3 (b) The board shall allow a temporary change in a  
4 hospital's rates, which may be effective immediately upon filing  
5 and in advance of review procedures, when a hospital files a  
6 claim, verified by either the chairperson of the hospital's  
7 governing body or by the chief executive officer of the  
8 hospital, that the temporary rate changes are in the public  
9 interest and are necessary to prevent insolvency, to maintain  
10 accreditation, for emergency repairs, or to relieve undue  
11 financial hardship. The claim shall state the facts supporting  
12 the hospital's position and the amount of increase in rates  
13 required to alleviate the situation, and shall summarize the  
14 overall effect of the rate increase.

15 (c) Following receipt of the claim for temporary relief,  
16 the board shall review the claim through its usual procedures  
17 and standards; provided that this power of review shall not  
18 affect the hospital's ability to place the temporary rate  
19 increase into effect immediately. The review of the hospital's  
20 claim shall be for a permanent rate increase and the board may  
21 include any other factual information in the review that may be  
22 necessary for a permanent rate increase review. As a result of



1 its findings from the permanent rate increase review, the board  
2 may allow the temporary rate increase to become permanent, deny  
3 any increase, allow a smaller increase, or allow a greater  
4 increase.

5 (d) When any change affecting an increase in rates becomes  
6 effective before a final order is entered in the proceedings,  
7 for whatever reasons, where the board deems it necessary and  
8 practicable, the board may order the hospital to keep a detailed  
9 and accurate account of all amounts received by reason of the  
10 increase in rates and the identities of purchasers and third-  
11 party payors from whom the amounts were received. At the  
12 conclusion of any hearing, appeal, or other proceeding, the  
13 board may order the hospital to refund with interest to each  
14 affected purchaser and third-party payor any part of the  
15 increase in rates that may be held to be excessive or  
16 unreasonable. If a refund is not practicable, the hospital,  
17 under appropriate terms and conditions determined by the board,  
18 shall charge over and amortize by means of a temporary decrease  
19 in rates whatever income is realized from that portion of the  
20 increase in rates that was subsequently held to be excessive or  
21 unreasonable.



1 (e) Upon a determination that a hospital has overcharged  
2 purchasers, charged purchasers at rates not approved by the  
3 board, or charged rates that were subsequently held to be  
4 excessive or unreasonable, the board may prescribe rebates to  
5 purchasers and third-party payors in effect by the aggregate  
6 total of the overcharge.

7 (f) The board may initiate a proceeding against any  
8 hospital at any time with regard to compliance with rates  
9 approved and the efficiency and effectiveness of the care  
10 provided by the hospital.

11 § -15 Incentives. As an incentive to encourage  
12 efficient management and operation of hospitals subject to this  
13 chapter, the board shall allow a hospital that is more efficient  
14 than anticipated to retain a portion of the resulting savings.  
15 A hospital that is less efficient than anticipated shall bear  
16 the resulting deficits.

17 § -16 Utilization review and quality assurance; quality  
18 assurance advisory group. (a) In order to avoid unnecessary or  
19 inappropriate utilization of health care services and to ensure  
20 the provision of high quality health care, the board shall  
21 establish a utilization review and quality assurance program.  
22 The board shall coordinate this program with utilization review

1 and peer review programs presently established in state  
2 agencies, hospital service and medical service corporations,  
3 hospitals, or other organizations.

4 (b) After holding public hearings, the board shall develop  
5 a plan for the review, on a sampling basis, of the necessity of  
6 admissions, length of stay, and quality of care rendered at the  
7 hospitals that are subject to this chapter.

8 (c) The board shall monitor identified problem areas and  
9 impose any sanctions and provide any incentives that may be  
10 necessary to ensure high quality and appropriate services and  
11 utilization in hospitals subject to this chapter.

12 (d) To assist the board in its efforts under this section,  
13 the board shall create a quality assurance advisory group and  
14 appoint one of the board's members as chairperson of the group.  
15 The group shall be composed of representatives of consumers,  
16 providers, payors, and regulating agencies.

17 § -17 Powers with respect to insurance policies and  
18 health maintenance organizations. (a) With respect to any  
19 policy of accident or health or sickness insurance, and with  
20 respect to any health maintenance organization or similar  
21 health-related organization, the board shall:



- 1           (1) Be considered for all purposes a directly affected  
2           party before the insurance commissioner for purposes  
3           of any application, hearing, or appeal on insurance  
4           matters;
- 5           (2) Review requests for, and make comments on, proposed  
6           rate increases or coverage decreases submitted to the  
7           insurance commissioner with respect to the  
8           reasonableness of the request and impact on health  
9           care cost containment; and
- 10          (3) Comment on the advisability, reasonableness, and  
11          impact on health care cost containment of any other  
12          matter coming before the insurance commissioner or any  
13          other governmental agency or body.
- 14          (b) On or before the date of filing with the insurance  
15          commissioner of any rate, including any proposed increase or  
16          decrease, and any coverage matter, including any proposed  
17          increase or decrease, each company or organization described in  
18          subsection (a) shall notify the board of that filing as the  
19          board directs.
- 20          (c) Each company or organization described in subsection  
21          (a) shall establish, in a written report that shall be



1 incorporated into each proposed rate application, that it has  
2 thoroughly investigated and considered:

3 (1) The economic and social impact of any proposed rate  
4 increase, or service decrease, on health care cost  
5 containment and upon health care purchasers, including  
6 classes of purchasers, such as the elderly and low-  
7 and fixed-income persons;

8 (2) State-of-the-art advances in insurance and health care  
9 cost containment, hospital management, and rate  
10 design, as alternatives to or in mitigation of any  
11 rate increase or service decrease. The written report  
12 shall describe the state-of-the-art advances  
13 considered and shall contain specific findings as to  
14 each consideration, including the reasons for the  
15 adoption or rejection;

16 (3) Implementation of cost control systems, including a  
17 combination of education, persuasion, financial  
18 incentives and disincentives to control costs;

19 (4) Initiatives to create alternative delivery systems;  
20 and

21 (5) Efforts to encourage health care providers to control  
22 costs, including the elimination of unnecessary or



1           duplicative facilities and services, promotion of  
2           alternative forms of care, and other cost control  
3           mechanisms.

4       §   -18   **Public disclosure.** From time to time, the board  
5 shall conduct analyses and studies relating to health care  
6 costs, the financial status of any health care provider subject  
7 to this chapter, or any other appropriate related matters. The  
8 board may publish and disseminate any information useful to the  
9 public in making informed choices about health care providers.

10       §   -19   **Exemptions from state antitrust laws.** Actions of  
11 the board shall be exempt from antitrust or other action as  
12 provided in chapter 480. Any actions of health care providers  
13 under the board's jurisdiction, when made in compliance with  
14 orders, directives, or rules issued or adopted by the board,  
15 shall likewise be exempt. Health care providers shall be  
16 subject to the antitrust guidelines of the United States Federal  
17 Trade Commission and the United States Department of Justice.

18       §   -20   **Penalties for violations.** In addition to any  
19 civil remedies set forth in this chapter, any person or health  
20 care provider violating any provision of this chapter or any  
21 valid order or rule lawfully established pursuant to this  
22 chapter shall be guilty of a misdemeanor. Each day of a





1 continuing violation after conviction shall be considered a  
2 separate offense. No fines assessed may be considered part of  
3 the hospital's costs in the regulation of its rates."

4 SECTION 3. The legislature finds that changing market  
5 forces may require periodic changes in the regulatory structure  
6 for health care providers and, accordingly, directs the board of  
7 directors of the Hawaii health care authority established by  
8 this Act to examine the hospital rate-setting methodology  
9 established by this Act, including the need for hospital rate-  
10 setting and the development of alternatives to the cost-based  
11 reimbursement methodology as a means of controlling hospital  
12 costs. The board of directors of the Hawaii health care  
13 authority shall report its findings, recommendations, and any  
14 proposed legislation, if necessary, to the legislature and the  
15 governor no later than twenty days prior to the convening of the  
16 regular session of 2013.

17 SECTION 4. The auditor shall evaluate the Hawaii health  
18 care authority and its board of directors and shall report its  
19 findings and recommendations, including any proposed  
20 implementing legislation, to the legislature no later than  
21 twenty days before the convening of the regular session of 2014,  
22 including an assessment of whether the public interest requires



1 that the law establishing the authority and board be modified or  
2 repealed.

3 SECTION 5. It is the intent of this Act not to jeopardize  
4 the receipt of any federal aid nor to impair the obligation of  
5 the State or any agency thereof to the holders of any bond  
6 issued by the State or by any state agency. To the extent  
7 necessary to effectuate this intent, the governor may modify the  
8 strict provisions of this Act, but shall promptly report any  
9 modification, and the reasons therefor, to the legislature at  
10 the regular session immediately following the modification, for  
11 review by the legislature.

12 SECTION 6. If any provision of this Act, or the  
13 application thereof to any person or circumstance is held  
14 invalid, the invalidity shall not affect other provisions or  
15 applications of this Act, which can be given effect without the  
16 invalid provision or application, and to this end the provisions  
17 of this Act are severable.

18 SECTION 7. This Act shall take effect upon its approval.

19

INTRODUCED BY:

*Calvin K. Ray*  
BY REQUEST

JAN 13 2012



# H.B. NO. 1822

**Report Title:**

Health Care Authority; Regulation of Private Hospital Rates

**Description:**

Establishes the Hawaii health care authority for administrative purposes within the DOH to regulate private hospital rates and ensure the containment of health care costs.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

