

JAN 24 2013

A BILL FOR AN ACT

RELATING TO DENTAL SERVICE CORPORATIONS.

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

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding to title 24 a new chapter to be appropriately designated
3 and to read as follows:

4 "CHAPTER

5 DENTAL SERVICE CORPORATIONS

6 § -1 Definitions. As used in this chapter:

7 "Capitated basis" means fixed per member per month payment
8 or percentage of premium payment wherein the provider assumes
9 the full risk for the cost of contracted services without regard
10 to the type, value, or frequency of services provided. For
11 purposes of this definition, capitated basis includes the cost
12 associated with operating staff model facilities.

13 "Carrier" means a dental service corporation, a health
14 maintenance organization, an insurer, a nonprofit hospital and
15 medical service corporation, a mutual benefit society, or other
16 entity responsible for the payment of benefits or provision of
17 services under a group contract.

18 "Commissioner" means the insurance commissioner.

1 "Copayment" means an amount an enrollee must pay to receive
2 a specific service which is not fully prepaid.

3 "Dental care services" include the practices, acts, and
4 operations pertaining to dentistry as defined in section 448-1.

5 "Dental insurance plan" means insurance, as defined in
6 section 431:1-201, for dental care services.

7 "Dental service corporation" means any person who
8 undertakes to provide or to arrange for or administer one or
9 more dental insurance plans.

10 "Enrollee" means an individual who is covered by a dental
11 service corporation.

12 "Evidence of coverage" means a statement of the essential
13 features and services of the dental service corporation coverage
14 that is given to the subscriber by the dental service
15 corporation or by the group contract holder.

16 "Grievance" means a written complaint submitted in
17 accordance with the dental service corporation's formal
18 grievance procedure by or on behalf of the enrollee regarding
19 any aspect of the dental service corporation relative to the
20 enrollee.

1 "Group contract" means a contract for dental care services
2 which by its terms limits eligibility to members of a specified
3 group. The group contract may include coverage for dependents.

4 "Group contract holder" means the person to which a group
5 contract has been issued.

6 "Individual contract" means a contract for dental care
7 services issued to and covering an individual. The individual
8 contract may include dependents of the subscriber.

9 "Insolvent" or "insolvency" means that the dental service
10 corporation has been declared insolvent and placed under an
11 order of supervision, rehabilitation, or liquidation by a court
12 of competent jurisdiction.

13 "Net worth" means the excess of total assets over total
14 liabilities, but the liabilities shall not include fully
15 subordinated debt.

16 "Participating provider" means a provider as defined in
17 this section, who, under an express or implied contract with the
18 dental service corporation or with its contractor or
19 subcontractor, has agreed to provide dental care services to
20 enrollees with an expectation of receiving payment, other than
21 copayment or deductible, directly or indirectly from the dental
22 service corporation.

1 "Person" has the same meaning as in section 431:1-212.

2 "Provider" means any person licensed to practice dentistry
3 as defined in section 448-1 or otherwise authorized to furnish
4 dental care services.

5 "Replacement coverage" means the benefits provided by a
6 succeeding carrier.

7 "Subscriber" means an individual whose employment or other
8 status, except family dependency, is the basis for eligibility
9 for enrollment in the dental service corporation, or in the case
10 of an individual contract, the person in whose name the contract
11 is issued.

12 "Uncovered expenditures" means the costs to the dental
13 service corporation for dental care services that are the
14 obligation of the dental service corporation, for which an
15 enrollee may also be liable in the event of the dental service
16 corporation's insolvency, and for which no alternative
17 arrangements have been made that are acceptable to the
18 commissioner. Uncovered expenditures may include, but are not
19 limited to, out-of-network services not covered by a policy,
20 endorsement, or contract; referral services and; dental care
21 services which are not the obligation of the dental service
22 corporation. Uncovered expenditures shall not include

1 expenditures for services when a provider has agreed not to bill
2 the enrollee even though the provider is not paid by the dental
3 service corporation, or for services that are guaranteed,
4 insured, or assumed by a person or organization other than the
5 dental service corporation.

6 **§ -2 Establishment of a dental service corporation.**

7 (a) Any person may apply to the commissioner for a certificate
8 of authority to establish and operate a dental service
9 corporation in compliance with this chapter. No person shall
10 establish or operate a dental service corporation in this State
11 without obtaining a certificate of authority under this
12 chapter. A foreign corporation may qualify under this chapter,
13 subject to its registration to do business in this State in
14 compliance with all provisions of this chapter and other
15 applicable state laws.

16 (b) Any dental service corporation formed and operating
17 pursuant to chapter 423 as of July 1, 2013, shall submit an
18 application for a certificate of authority under subsection (c)
19 within ninety days of July 1, 2013. The applicant may continue
20 to operate until the commissioner acts upon the application. In
21 the event that an application made pursuant to this subsection
22 is denied, the applicant shall thereafter be treated as a dental

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1 service corporation whose certificate of authority has been
2 revoked.

3 (c) Each application for a certificate of authority shall
4 be verified by an officer or authorized representative of the
5 applicant, shall be in a form prescribed by the commissioner,
6 and shall set forth or be accompanied by the following:

7 (1) A copy of the organizational documents of the
8 applicant, such as the articles of incorporation,
9 articles of association, partnership agreement, trust
10 agreement, or other applicable documents, and all
11 amendments thereto;

12 (2) A copy of the bylaws, rules and regulations, or
13 similar document, if any, regulating the conduct of
14 the internal affairs of the applicant;

15 (3) A list of the names, addresses, official positions,
16 and biographical information on forms acceptable to
17 the commissioner of the persons who are to be
18 responsible for the conduct of the affairs and day-to-
19 day operations of the applicant, including all members
20 of the board of directors, board of trustees,
21 executive committee or other governing board or
22 committee, and the principal officers in the case of a

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- 1 corporation, or the partners or members in the case of
2 a partnership or association;
- 3 (4) A copy of any contract form made or to be made between
4 any class of providers and the dental service
5 corporation and a copy of any contract made or to be
6 made between third party administrators, marketing
7 consultants, or persons listed in paragraph (3) and
8 the dental service corporation;
- 9 (5) A copy of the form of evidence of coverage to be
10 issued to the enrollees;
- 11 (6) A copy of the form of group contract, if any, which is
12 to be issued to employers, unions, trustees, or other
13 organizations;
- 14 (7) Financial statements showing the applicant's assets,
15 liabilities, and sources of financial support, and
16 both a copy of the applicant's most recent audited
17 financial statement and an unaudited current financial
18 statement;
- 19 (8) A financial feasibility plan which includes detailed
20 enrollment projections, the methodology for
21 determining premium rates to be charged during the
22 first twelve months of operations certified by an

1 actuary or other qualified person, a projection of
2 balance sheets, cash flow statements showing any
3 capital expenditures, purchase and sale of
4 investments, deposits with the State, income and
5 expense statements anticipated from the start of
6 operations until the organization has had net income
7 for at least one year, and a statement as to the
8 sources of working capital as well as any other
9 sources of funding;

10 (9) A power of attorney duly executed by such applicant,
11 if not domiciled in this State, appointing the
12 commissioner and the commissioner's successors in
13 office, and duly authorized deputies, as the true and
14 lawful attorney of such applicant in and for this
15 State upon whom all lawful process in any legal action
16 or proceeding against the dental service corporation
17 on a cause of action arising in this State may be
18 served;

19 (10) A statement or map reasonably describing the
20 geographic area or areas to be served;

- 1 (11) A description of the internal grievance procedures to
- 2 be utilized for the investigation and resolution of
- 3 enrollee complaints and grievances;
- 4 (12) A description of the proposed quality assurance
- 5 program, including the formal organizational
- 6 structure, methods for developing criteria, procedures
- 7 for comprehensive evaluation of the quality of care
- 8 rendered to enrollees, and processes to initiate
- 9 corrective action and reevaluation when deficiencies
- 10 in provider or organizational performance are
- 11 identified;
- 12 (13) A description of the procedures to be implemented to
- 13 meet the protection against insolvency requirements in
- 14 section -6;
- 15 (14) A list of the names, addresses, and license numbers of
- 16 all providers or groups of providers with which the
- 17 dental service corporation has agreements; and
- 18 (15) Such other information as the commissioner may
- 19 require.
- 20 (d) If the commissioner finds that the applicant has met
- 21 the requirements for and is fully entitled thereto under the
- 22 applicable insurance laws, the commissioner shall issue an

1 appropriate certificate of authority to the applicant. If the
2 commissioner does not so find, the commissioner shall deny the
3 applicant the certificate of authority within a reasonable
4 length of time following filing of the completed application by
5 the applicant. A certificate of authority shall be denied only
6 after the commissioner complies with the requirements of section
7 -13.

8 (e) The commissioner may adopt rules under chapter 91 for
9 the implementation and administration of this chapter.

10 **§ -3 Fiduciary responsibilities.** (a) Any director,
11 officer, employee, or partner of a dental service corporation
12 who receives, collects, disburses, or invests funds in
13 connection with the activities of an organization shall be
14 responsible for the funds in a fiduciary relationship to the
15 organization.

16 (b) A dental service corporation shall maintain in force a
17 fidelity bond or fidelity insurance on such employees, officers,
18 directors, and partners in an amount not less than \$250,000 for
19 each dental service corporation or a maximum of \$5,000,000 in
20 aggregate maintained on behalf of dental service corporations
21 owned by a common parent corporation, or a sum as may be
22 prescribed by the commissioner.

1 § -4 **Annual and quarterly reports.** (a) Each dental
2 service corporation shall file with the commissioner:

3 (1) An audit, by an independent certified public
4 accountant or an accounting firm designated by the
5 dental service corporation of the financial
6 statements, reporting the financial condition and
7 results of operations of the dental service
8 corporation, annually on or before June 1, or a later
9 date as the commissioner upon request or for cause may
10 specify. The dental service corporation, on an annual
11 basis and prior to the commencement of the audit,
12 shall notify the commissioner in writing of the name
13 and address of the person or firm retained to conduct
14 the annual audit. The commissioner may disapprove the
15 dental service corporation's designation within
16 fifteen days of receipt of the dental service
17 corporation's notice, and the dental service
18 corporation shall be required to designate another
19 independent certified public accountant or accounting
20 firm;

1 (2) A list of the providers who have executed a contract
2 that complies with section -6(d), annually on or
3 before March 1; and

4 (3) A description of the available grievance procedures,
5 the total number of grievances handled through those
6 procedures, a compilation of the causes underlying
7 those grievances, and a summary of the final
8 disposition of those grievances, annually on or before
9 March 1.

10 (b) The commissioner may require additional reports as are
11 deemed necessary and appropriate to enable the commissioner to
12 carry out the commissioner's duties under this chapter.

13 (c) Any dental service corporation failing or refusing to
14 submit any of the documents required under this section shall be
15 liable for a penalty in an amount not less than \$100 and not
16 more than \$500 for each day of delinquency. Penalties collected
17 pursuant to this section shall be deposited into the compliance
18 resolution fund.

19 § -5 **Information to subscribers.** (a) The dental
20 service corporation shall provide to its subscribers a list of
21 providers and participating providers, upon enrollment and
22 reenrollment.

1 (b) Every dental service corporation shall provide to its
2 subscribers notice of any material change in the operation of
3 the organization that will affect them directly within thirty
4 days of the material change.

5 (c) The dental service corporation shall provide to
6 subscribers information on how services may be obtained, where
7 additional information on access to services may be obtained, a
8 description of the internal grievance procedures, and a
9 telephone number for a subscriber to contact the dental service
10 corporation at no cost to the subscriber.

11 (d) For the purpose of this section, "material change"
12 means any major change in provider or participating provider
13 agreements.

14 § -6 **Protection against insolvency.** (a) Net worth
15 requirements are as follows:

16 (1) Before issuing any certificate of authority, the
17 commissioner shall require that the dental service
18 corporation has an initial net worth of \$2,000,000 and
19 shall thereafter maintain the minimum net worth
20 required under paragraph (2);

- 1 (2) Except as provided in paragraphs (3) and (4), every
2 dental service corporation shall maintain a minimum
3 net worth equal to the greater of:
- 4 (A) \$2,000,000;
- 5 (B) Two per cent of annual premium revenues as
6 reported on the most recent annual financial
7 statement filed with the commissioner on the
8 first \$150,000,000 of premium revenues and one
9 per cent of annual premium revenues on the
10 premium revenues in excess of \$150,000,000;
- 11 (C) An amount equal to the sum of three months
12 uncovered dental care expenditures as reported on
13 the most recent financial statement filed with
14 the commissioner; or
- 15 (D) An amount equal to eight per cent of annual
16 dental care expenditures except those paid on a
17 capitated basis as reported on the most recent
18 financial statement filed with the
19 commissioner;
- 20 (3) The minimum net worth requirement set forth in
21 paragraph (2)(A) shall be phased in as follows:

1 (A) Seventy-five per cent of the required amount by
2 January 1, 2016; and

3 (B) One hundred per cent of the required amount by
4 December 31, 2017; and

5 (4) The following shall apply in determining compliance
6 with the requirements of this subsection:

7 (A) In determining net worth, no debt shall be
8 considered fully subordinated unless the
9 subordination clause is in a form acceptable to
10 the commissioner. Any interest obligation
11 relating to the repayment of any subordinated
12 debt shall be similarly subordinated;

13 (B) The interest expenses relating to the repayment
14 of any fully subordinated debt shall be
15 considered covered expenses; and

16 (C) Any debt incurred by a note meeting the
17 requirements of this section, and otherwise
18 acceptable to the commissioner, shall not be
19 considered a liability and shall be recorded as
20 equity.

21 (b) Deposit requirements are as follows:

- 1 (1) Unless otherwise provided below, each dental service
2 corporation shall deposit with the commissioner or, at
3 the discretion of the commissioner, with any
4 organization or trustee acceptable to the commissioner
5 through which a custodial or controlled account is
6 utilized, cash, securities, or any combination of
7 these or other measures that are acceptable to the
8 commissioner which at all times shall have a value of
9 not less than \$300,000;
- 10 (2) A dental service corporation that is in operation on
11 July 1, 2013, shall make a deposit equal to \$150,000.
12 Within one year after January 1, 2014, a dental
13 service corporation that is in operation on January 1,
14 2014, shall make an additional deposit of \$150,000 for
15 a total of \$300,000;
- 16 (3) Deposits shall be an asset of the dental service
17 corporation in the determination of net worth;
- 18 (4) All income from deposits shall be an asset of the
19 dental service corporation. A dental service
20 corporation that has made a securities deposit may
21 withdraw that deposit or any part thereof after making
22 a substitute deposit of cash, securities, or any

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1 combination of these or other measures of equal amount
2 and value. Any securities shall be approved by the
3 commissioner before being deposited or substituted;

4 (5) The deposit shall be used to protect the interests of
5 the dental service corporation's enrollees and to
6 assure continuation of dental care services to
7 enrollees of a dental service corporation which is in
8 rehabilitation or conservation. The commissioner may
9 use the deposit for administrative costs directly
10 attributable to a receivership or liquidation. If the
11 dental service corporation is placed in receivership
12 or liquidation, the deposit shall be an asset subject
13 to the provisions of article 15 of chapter 431; and

14 (6) The commissioner may reduce or eliminate the deposit
15 requirement if the dental service corporation deposits
16 with the director of finance of this State, or the
17 commissioner, or other official body of the state or
18 jurisdiction of domicile of such dental service
19 corporation, for the protection of all subscribers and
20 enrollees, wherever located, cash, acceptable
21 securities, or surety, and delivers to the
22 commissioner a certificate to such effect, duly

1 authenticated by the appropriate state official
2 holding the deposit.

3 (c) Every dental service corporation, when determining
4 liabilities, shall include an amount estimated in the aggregate
5 to provide for any unearned premium and for the payment of all
6 claims for dental care expenditures which have been incurred,
7 whether reported or unreported, which are unpaid and for which
8 the organization is or may be liable, and to provide for the
9 expense of adjustment or settlement of claims. These
10 liabilities shall be computed in accordance with rules adopted
11 by the commissioner upon reasonable consideration of the
12 ascertained experience and character of the dental service
13 corporation.

14 (d) Every contract between a dental service corporation
15 and a participating provider shall be in writing and shall set
16 forth that in the event the dental service corporation fails to
17 pay for dental care services as set forth in the contract, the
18 subscriber or enrollee shall not be liable to the provider for
19 any sums owed by the dental service corporation. In the event
20 that a contract with a participating provider has not been
21 reduced to writing as required by this subsection or that a
22 contract fails to contain the required prohibition, the

1 participating provider shall not collect or attempt to collect
2 from the subscriber or enrollee sums owed by the dental service
3 corporation. No participating provider, or agent, trustee, or
4 assignee thereof, may maintain any action at law against a
5 subscriber or enrollee to collect sums owed by the dental
6 service corporation.

7 (e) The commissioner shall require that each dental
8 service corporation have a plan for handling insolvency which
9 allows for continuation of benefits for the duration of the
10 contract period for which premiums have been paid. In
11 considering such a plan, the commissioner may require:

- 12 (1) Insurance to cover the expenses to be paid for
13 continued benefits after an insolvency;
- 14 (2) Provisions in participating provider contracts that
15 obligate the provider to provide dental care services
16 for the duration of the period after the dental
17 service corporation's insolvency for which premium
18 payment has been made;
- 19 (3) Insolvency reserves;
- 20 (4) Acceptable letters of credit; or

1 (5) Any other arrangements acceptable to the commissioner
2 to assure that benefits are continued as specified
3 above.

4 (f) An agreement to provide dental care services between a
5 participating provider and a dental service corporation shall
6 require that a participating provider shall give the dental
7 service corporation at least sixty days' advance notice in the
8 event of termination.

9 (g) Each dental service corporation shall prepare for
10 review by the commissioner on or before the forty-fifth day of
11 each quarter, a copy of its quarterly net solvency report
12 verified by at least two principal officers. The commissioner
13 may prescribe the forms on which the reports are to be
14 prepared. Every dental service corporation shall maintain a
15 copy of its current net solvency report on the premises of its
16 primary place of business. The commissioner may order an
17 examination, subject to article 2 of chapter 431, to determine
18 whether a dental service corporation is in compliance with this
19 section.

20 (h) Any dental service corporation that fails or refuses
21 to prepare or produce for review the quarterly net solvency

1 report or any of the documents as required by this section shall
2 be liable for a penalty pursuant to section -4(c).

3 § -7 **Uncovered expenditures insolvency deposit.** (a)

4 If, at any time, uncovered expenditures exceed ten per cent of
5 total dental care expenditures, a dental service corporation
6 shall place with the commissioner or with any organization or
7 trustee acceptable to the commissioner through which a custodial
8 or controlled account is maintained, an uncovered expenditures
9 insolvency deposit consisting of cash or securities that are
10 acceptable to the commissioner. Such deposit shall have, at all
11 times, a fair market value in an amount of one-hundred-twenty
12 per cent of the dental service corporation's outstanding
13 liability for uncovered expenditures for enrollees in this
14 State, including incurred but not reported claims, and shall be
15 calculated as of the first day of the month and maintained for
16 the remainder of the month. If a dental service corporation is
17 not otherwise required to file a quarterly report, it shall file
18 a report within forty-five days of the end of the calendar
19 quarter with information sufficient to demonstrate compliance
20 with this section.

21 (b) The deposit required under this section is in addition
22 to the deposit required under section -6 and is an asset of

1 the dental service corporation in the determination of net
2 worth. All income from the deposits or trust accounts shall be
3 assets of the dental service corporation and may be withdrawn
4 from the deposit or trust account quarterly with the approval of
5 the commissioner.

6 (c) A dental service corporation that has made a deposit
7 may withdraw that deposit or any part of the deposit if:

8 (1) A substitute deposit of cash or securities of equal
9 amount and value is made;

10 (2) The fair market value exceeds the amount of the
11 required deposit; or

12 (3) The required deposit under subsection (a) is reduced
13 or eliminated.

14 Deposits, substitutions, or withdrawals may be made only with
15 the prior written approval of the commissioner.

16 (d) The deposit required under this section is held in
17 trust and may be used only as provided in this section. The
18 commissioner may use the deposit of an insolvent dental service
19 corporation for administrative costs associated with
20 administering the deposit and payment of claims of enrollees of
21 this State for uncovered expenditures in this State. Claims for
22 uncovered expenditures shall be paid on a pro rata basis based

1 on assets available to pay such ultimate liability for incurred
2 expenditures. Partial distribution may be made pending final
3 distribution. Any amount of the deposit remaining shall be paid
4 into the liquidation or receivership of the dental service
5 corporation.

6 (e) The commissioner may prescribe the time, manner, and
7 form for filing claims under subsection (d).

8 (f) The commissioner may require dental service
9 corporations to file annual, quarterly, or more frequent reports
10 as the commissioner deems necessary to demonstrate compliance
11 with this section. The commissioner may require that the
12 reports include liability for uncovered expenditures as well as
13 an audit opinion.

14 **§ -8 Reserve credit for reinsurance.** Any dental service
15 corporation that takes credit for reserves on risks ceded to a
16 reinsurer shall be subject to provisions of article 4A of
17 chapter 431.

18 **§ -9 Replacement coverage.** (a) For purposes of this
19 chapter, "discontinuance" means the termination of the contract
20 between the group contract holder and a dental service
21 corporation due to the insolvency of the dental service
22 corporation, and does not refer to the termination of any

1 agreement between any individual subscriber and the dental
2 service corporation.

3 (b) Any carrier providing replacement coverage with
4 respect to group dental benefits within a period of sixty days
5 from the date of discontinuance of a prior dental service
6 corporation contract or policy providing such dental benefits
7 shall immediately cover all enrollees who were validly covered
8 under the previous dental service corporation contract or policy
9 at the date of discontinuance and who would otherwise be
10 eligible for coverage under the succeeding carrier's contract,
11 regardless of any provisions of the contract relating to active
12 employment.

13 (c) Except to the extent benefits for the condition would
14 have been reduced or excluded under the prior carrier's contract
15 or policy, no provision in a succeeding carrier's contract of
16 replacement coverage which would operate to reduce or exclude
17 benefits on the basis that the condition giving rise to benefits
18 preexisted the effective date of the succeeding carrier's
19 contract shall be applied with respect to those enrollees
20 validly covered under the prior carrier's contract or policy on
21 the date of discontinuance.

1 § -10 Powers of insurers and hospital and medical
2 service corporations. (a) An insurance company licensed in
3 this State, or a hospital or medical service corporation
4 authorized to do business in this State, either directly or
5 through a subsidiary or affiliate, may organize and operate a
6 dental service corporation under the provisions of this
7 chapter. Notwithstanding any other law to the contrary, any two
8 or more insurance companies, hospital or medical service
9 corporations, dental service corporations, or subsidiaries or
10 affiliates thereof, may jointly organize and operate a dental
11 service corporation. The business of insurance is deemed to
12 include the providing of dental care services by a dental
13 service corporation owned or operated by an insurer or a
14 subsidiary thereof.

15 (b) Notwithstanding any contrary provision of laws
16 pertaining to insurance or hospital or medical service
17 corporations under chapter 431 or 432 or 432D, an insurer or a
18 hospital or medical service corporation may contract with a
19 dental service corporation to provide insurance or similar
20 protection against the cost of dental care services provided
21 through dental service corporations and to provide coverage in
22 the event of the failure of the dental service corporation to

1 meet its obligations. The enrollees of a dental service
2 corporation constitute a group permitted under chapter 431 or
3 432 or 432D. Among other things, under such contracts, the
4 insurer or hospital or medical service corporation may make
5 benefit payments to dental service corporations for dental care
6 services rendered by providers.

7 **§ -11 Examinations.** (a) The commissioner may examine
8 the affairs of any dental service corporation or of any
9 providers with whom such dental service corporation has
10 contracts, agreements, or other arrangements as often as is
11 reasonably necessary for the protection of the interests of the
12 people of this State.

13 (b) Every dental service corporation and provider shall
14 submit its books and records for examination and in every way
15 facilitate the completion of the examination. In the event a
16 dental service corporation or a provider fails to comply with
17 the directions of the commissioner, the commissioner may examine
18 the affiliates of the dental service corporation or provider to
19 obtain the information. For the purpose of examinations, the
20 commissioner may administer oaths to, and examine the officers
21 and agents of, the dental service corporation and the principals
22 of providers concerning their business.

1 (c) The cost of examinations under this section shall be
2 assessed against the dental service corporation being examined
3 and remitted to the commissioner for deposit into the compliance
4 resolution fund.

5 (d) In lieu of such examination, the commissioner may
6 accept the report of an examination made by the commissioner or
7 the appropriate official of another state.

8 **§ -12 Fees.** (a) The commissioner shall collect in
9 advance the following fees:

10 (1) For filing an application for a certificate of
11 authority or amendment thereto, \$600; and

12 (2) For all services subsequent to the issuance of a
13 certificate of authority (including extension of the
14 certificate of authority), \$400.

15 (b) No certificate of authority shall contain an
16 expiration date, but all certificates of authority shall be
17 extended from time to time in order to continue to be valid.
18 When the commissioner issues or extends a certificate of
19 authority, the commissioner shall determine the date prior to
20 which the certificate of authority is required to be extended
21 and shall so notify the insurer holding a certificate of
22 authority in writing. This date is called the extension date.

1 If the fee is not paid before or on the extension date, a
2 penalty shall be imposed in the amount of fifty per cent of the
3 fee. If the fee and the penalty are not paid within thirty days
4 immediately following the extension date, the commissioner may
5 suspend the certificate of authority and shall not reinstate the
6 certificate of authority until the fee and penalty have been
7 paid.

8 (c) All fees and penalties collected pursuant to this
9 section shall be deposited into the compliance resolution fund.

10 **§ -13 Suspension, revocation, or denial of certificate**
11 **of authority.** (a) The commissioner may suspend, revoke, or
12 refuse to extend any certificate of authority issued under this
13 chapter and may deny any application for a certificate of
14 authority, if the commissioner finds that any of the conditions
15 listed below exist:

16 (1) The dental service corporation is operating
17 significantly in contravention of its basic
18 organizational document or in a manner contrary to
19 that described in any other information submitted
20 under section -2, unless amendments to such
21 submissions have been filed with and approved by the
22 commissioner;

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- 1 (2) The dental service corporation or applicant does not
2 provide or arrange for basic dental care services;
- 3 (3) The dental service corporation or applicant is no
4 longer financially responsible and may reasonably be
5 expected to be unable to meet its obligations to
6 enrollees or prospective enrollees;
- 7 (4) The dental service corporation has failed to correct,
8 within the time prescribed by subsection (b), any
9 deficiency occurring due to the dental service
10 corporation's prescribed minimum net worth being
11 impaired;
- 12 (5) The dental service corporation, applicant or any
13 person on its behalf, has advertised or merchandised
14 its services in an untrue, misrepresentative,
15 misleading, deceptive, or unfair manner;
- 16 (6) The dental service corporation, applicant or any
17 person on its behalf, fails or refuses to produce or
18 submit any of the documents required under sections
19 -4 and -6;
- 20 (7) The operation or continued operation of the dental
21 service corporation would be hazardous to its
22 enrollees; or

1 (8) The dental service corporation or applicant has
2 otherwise failed substantially to comply with this
3 chapter.

4 (b) The following shall pertain when insufficient net
5 worth is maintained:

6 (1) Whenever the commissioner finds that the net worth
7 maintained by any dental service corporation subject
8 to this chapter is less than the minimum net worth
9 required, the commissioner shall give written notice
10 to the dental service corporation of the amount of the
11 deficiency and require the dental service corporation
12 to:

13 (A) File with the commissioner a plan for correction
14 of the deficiency acceptable to the commissioner;
15 and

16 (B) Correct the deficiency within a reasonable time,
17 not to exceed sixty days, unless an extension of
18 time, not to exceed sixty additional days, is
19 granted by the commissioner. Such a deficiency
20 shall be deemed an impairment, and failure to
21 correct the impairment in the prescribed time
22 shall be grounds for suspension or revocation of

1 the certificate of authority or for placing the
2 dental service corporation in conservation,
3 rehabilitation, or liquidation; and

4 (2) Unless allowed by the commissioner, no dental service
5 corporation or person acting on its behalf, directly
6 or indirectly, may renew, issue, or deliver any
7 certificate, agreement, or contract of coverage in
8 this State, for which a premium is charged or
9 collected, when the dental service corporation writing
10 the coverage is impaired, and the fact of the
11 impairment is known to the dental service corporation
12 or to such person. However, the existence of an
13 impairment shall not prevent the issuance or renewal
14 of a certificate, agreement, or contract when the
15 enrollee exercises an option granted under the plan to
16 obtain a new, renewed, or converted coverage.

17 (c) A certificate of authority shall be suspended, revoked
18 or not extended, or an application for a certificate of
19 authority denied, or an administrative fine imposed, only after
20 compliance with the requirements of this subsection.

21 (1) Suspension or revocation of a certificate of
22 authority, refusal to extend a certificate of

1 authority, denial of an application, or imposition of
2 an administrative fine pursuant to section -15(a)
3 shall be by written order and shall be sent to the
4 dental service corporation or applicant by certified
5 or registered mail. The written order shall state the
6 grounds, charges, or conduct on which suspension,
7 revocation, refusal to extend, denial, or
8 administrative fine is based. The dental service
9 corporation or applicant, may request in writing a
10 hearing pursuant to section 431:2-308; and

11 (2) If the dental service corporation or applicant
12 requests a hearing pursuant to this section, the
13 commissioner shall issue a written notice of hearing
14 and send it to the dental service corporation or
15 applicant by certified or registered mail stating:

16 (A) A specific time for the hearing, which may not be
17 less than twenty nor more than thirty days after
18 mailing of the notice of hearing; and

19 (B) A specific place for the hearing.

20 (d) When the certificate of authority of a dental service
21 corporation is suspended, the dental service corporation shall
22 not, during the period of such suspension, enroll any additional

1 enrollees except newborn children or other newly acquired
2 dependents of existing subscribers, and shall not engage in any
3 advertising or solicitation whatsoever.

4 (e) When the certificate of authority of a dental service
5 corporation is revoked, such organization, immediately following
6 the effective date of the order of revocation, shall proceed to
7 wind up its affairs, and shall conduct no further business
8 except as may be essential to the orderly conclusion of the
9 affairs of such organization. It shall engage in no further
10 advertising or solicitation whatsoever. The commissioner, by
11 written order, may permit any further operation of the
12 organization as the commissioner may find to be in the best
13 interest of enrollees, to the end that enrollees will be
14 afforded the greatest practical opportunity to obtain continuing
15 dental care coverage.

16 § -14 Summary orders and supervision. (a) Whenever the
17 commissioner determines that the financial condition of any
18 dental service corporation is such that its continued operation
19 might be hazardous to its enrollees, creditors, or the general
20 public, or that it has violated any provision of this chapter,
21 the commissioner, after notice and hearing, may order the dental
22 service corporation to take such action as may be reasonably

1 necessary to rectify such condition or violation, including but
2 not limited to one or more of the following:

- 3 (1) Reducing the total amount of present and potential
4 liability for benefits by reinsurance or other method
5 acceptable to the commissioner;
- 6 (2) Reducing the volume of new business being accepted;
- 7 (3) Reducing expenses by specified methods;
- 8 (4) Suspending or limiting the writing of new business for
9 a period of time;
- 10 (5) Increasing the dental service corporation's capital
11 and surplus by contribution; or
- 12 (6) Taking any other steps as the commissioner may deem
13 appropriate under the circumstances.

14 (b) For purposes of this section, the violation by a
15 dental service corporation of any law of this State to which the
16 dental service corporation is subject shall be deemed a
17 violation of this chapter.

18 (c) The commissioner is authorized to set uniform
19 standards and criteria for early warning that the continued
20 operation of any dental service corporation might be hazardous
21 to its enrollees, creditors, or the general public, and to set
22 standards for evaluating the financial condition of any dental

1 service corporation, which standards shall be consistent with
2 the purposes expressed in subsection (a).

3 (d) The remedies and measures available to the
4 commissioner under this section shall be in addition to, and not
5 in lieu of, the remedies and measures available to the
6 commissioner under the provisions of article 15 of chapter 431.

7 **§ -15 Administrative fines and enforcement.** (a) The
8 commissioner, in addition to or in lieu of, suspension or
9 revocation of a certificate of authority pursuant to section
10 -13, the commissioner may levy an administrative fine upon the
11 dental service corporation in an amount not less than \$500 and
12 not more than \$50,000. The dental service corporation may
13 request, in writing, a hearing pursuant to section -13. The
14 order levying the fine shall specify the period within which the
15 fine shall be fully paid, which shall not be less than thirty
16 nor more than forty-five days from the date of the order. Upon
17 failure to pay the fine when due, the commissioner shall revoke
18 the insurer's certificate of authority if not already revoked,
19 and the fine shall be recovered in a civil action brought on
20 behalf of the commissioner by the attorney general. Any fine so
21 collected shall be remitted by the commissioner to the director

1 of finance and shall be placed to the credit of the compliance
2 resolution fund.

3 (b) If the commissioner, for any reason, has cause to
4 believe that any violation of this chapter has occurred or is
5 threatened, the commissioner may give notice to the dental
6 service corporation and to the representatives, or other persons
7 who appear to be involved in such suspected violation, to
8 arrange a conference with the alleged violators or their
9 authorized representatives for the purpose of attempting to
10 ascertain the facts relating to any suspected violation and, in
11 the event it appears that any violation has occurred or is
12 threatened, to arrive at an adequate and effective means of
13 correcting or preventing any violation. Proceedings under this
14 subsection shall not be governed by any formal procedural
15 requirements, and may be conducted in such manner as the
16 commissioner may deem appropriate under the circumstances.
17 However, unless consented to by the dental service corporation,
18 no order may result from a conference until the requirements of
19 this section are satisfied.

20 (c) The commissioner may issue an order directing a dental
21 service corporation or a representative of a dental service
22 organization to cease and desist from engaging in any act or

1 practice in violation of the provisions of this chapter. Any
2 person aggrieved by an order of the commissioner under this
3 section may obtain judicial review of the order in the manner
4 provided for by chapter 91.

5 (d) In the case of any violation of the provisions of this
6 chapter, if the commissioner elects not to issue a cease and
7 desist order, or in the event of noncompliance with a cease and
8 desist order issued pursuant to subsection (c), the commissioner
9 may institute a proceeding to obtain injunctive or other
10 appropriate relief in any court of competent jurisdiction.

11 **§ -16 Statutory construction and relationship to other**
12 **laws.** (a) Except as provided in subsection (c) and otherwise
13 provided in this chapter, the insurance laws shall not apply to
14 the activities authorized and regulated under this chapter of
15 any dental service corporation granted a certificate of
16 authority under this chapter. This chapter shall not apply to
17 an insurer or dental service corporation licensed and regulated
18 pursuant to the insurance laws or the dental service corporation
19 laws of this State except with respect to its dental service
20 corporation activities authorized and regulated pursuant to this
21 chapter.

1 (b) Solicitation of enrollees by a dental service
2 corporation granted a certificate of authority, or its
3 representatives, shall not be construed to violate any provision
4 of law relating to solicitation or advertising by health
5 professionals.

6 (c) Article 2, article 2D, article 13, and article 15 of
7 chapter 431, and the powers granted by those provisions to the
8 commissioner shall apply to dental service corporations, so long
9 as the application in any particular case is in compliance with
10 and is not preempted by applicable federal statutes and
11 regulations.

12 **§ -17 Acquisition of control of or merger of a dental**
13 **service corporation.** No person may make a tender for or a
14 request or invitation for tenders of, enter into an agreement to
15 exchange securities for, or acquire in the open market or
16 otherwise, any voting security of a dental service corporation
17 or enter into any other agreement if, after the consummation
18 thereof, that person, directly or indirectly, or by conversion
19 or by exercise of any right to acquire, would be in control of
20 the dental service corporation, and no person may enter into an
21 agreement to merge or consolidate with or otherwise to acquire
22 control of a dental service corporation, unless, at the time any

1 offer, request, or invitation is made or any agreement is
2 entered into, or prior to the acquisition of the securities if
3 no offer or agreement is involved, the person has filed with the
4 commissioner and has sent to the dental service corporation
5 information required by section 431:11-104 and the offer,
6 request, invitation, agreement, or acquisition has been approved
7 by the commissioner. Approval by the commissioner shall be
8 governed by section 431:11-104(d); provided that if no action is
9 taken by the commissioner within thirty days, the offer,
10 request, invitation, agreement, or acquisition shall be deemed
11 approved.

12 **§ -18 Federally funded programs; exemption.**

13 Requirements provided in this chapter relating to mandated
14 coverages or essential health benefits shall not be applicable
15 to any dental service corporation offering dental insurance
16 under a federally funded program under the Social Security Act,
17 as amended; provided that this exemption shall apply only to
18 that part of the dental service corporation's business under the
19 federally funded program.

20 **§ -19 Coordination of benefits.** (a) Dental service
21 corporations are permitted, but not required to adopt provisions
22 for coordination of benefits to avoid overinsurance and to

1 provide for the orderly payment of claims when a person is
2 covered by two or more group health insurance or health care
3 plans.

4 (b) If dental service corporations adopt provisions for
5 coordination of benefits, the provisions must be consistent with
6 the coordination of benefits provisions that are in general use
7 in the State for coordinating coverage between two or more group
8 health insurance or health care plans.

9 § -20 **Disclosure of dental care coverage and benefits.**

10 In order to ensure that all individuals understand their dental
11 care options and are able to make informed decisions, all dental
12 service corporations shall provide current and prospective
13 subscribers with written disclosure of coverages and benefits,
14 including information on coverage principles and any exclusions
15 or restrictions on coverage.

16 The information provided shall be current, understandable,
17 and available prior to enrollment, and upon request after
18 enrollment. A policy or contract provided to a subscriber which
19 describes coverages and benefits shall be in conformance with
20 part I of article 10 of chapter 431.

21 § -21 **Federal law compliance.** All dental service
22 corporations shall comply with applicable federal law. The

S.B. NO. 1073

1 commissioner shall enforce the consumer protections and market
2 reforms relating to insurance as set forth in the federal
3 Patient Protection and Affordable Care Act, Public Law 111-148."

4 SECTION 2. Chapter 423, Hawaii Revised Statutes, is
5 repealed.

6 SECTION 3. Chapter 448D, Hawaii Revised Statutes, is
7 repealed.

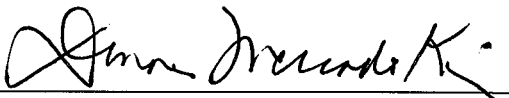
8 SECTION 4. This Act shall take effect on July 1, 2013.

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INTRODUCED BY: 

BY REQUEST

S.B. NO. 1073

Report Title:

Dental service corporations; dental service organizations.

Description:

Establishes licensing and financial solvency requirements for dental service corporations and repeals chapters 423 and 448D, Hawaii Revised Statutes.

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

JUSTIFICATION SHEET

SB. NO. 1073

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO DENTAL SERVICE CORPORATIONS.

PURPOSE: To establish the licensing and regulation of dental service corporations under the Insurance Commissioner.

MEANS: Add a new chapter to title 24, and repeal chapters 423 and 448D, Hawaii Revised Statutes.

JUSTIFICATION: The federal Patient Protection and Affordable Care Act, Public Law 111-148 (PPACA), requires states to establish health insurance exchanges. The PPACA allows limited scope stand-alone dental plans to be offered on exchanges as stand-alone plans or in conjunction with a qualified health plan. Stand-alone dental plans must meet federal certification standards, such as the inclusion of pediatric dental benefits.

Act 205, Session Laws of Hawaii 2011 (Act 205), established the Hawaii Health Connector. Act 205 requires the Hawaii Health Connector to make qualified dental plans available to qualified individuals and qualified employers beginning with effective dates on or before January 1, 2014.

Currently, dental service corporations are governed by chapter 423, which provides minimal registration requirements. Dental service organizations, governed by chapter 448D, regulate prepaid dental plans.

This bill proposes to establish licensing and financial solvency requirements for dental service corporations.

Impact on the public: This bill is necessary for the Hawaii Health Connector to make qualified dental plans available.

Impact on the department and other agencies: This bill provides for the certification of qualified dental plans by the Hawaii Health Connector.

GENERAL FUND: None.

OTHER FUNDS: Compliance Resolution Fund.

PPBS PROGRAM
DESIGNATION: CCA 106.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: July 1, 2013.