
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 a new chapter to title 24 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 chapter, "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 "Discontinuance" means the termination of the contract
11 between a group contract holder and a dental service corporation
12 due to the insolvency of the dental service corporation, and
13 does not refer to the termination of any agreement between any
14 individual subscriber and a dental service corporation.

15 "Enrollee" means an individual who is covered by a dental
16 service corporation.

17 "Evidence of coverage" means a statement of the essential
18 features and services of the dental service corporation coverage
19 that is given to the subscriber by the dental service
20 corporation or by the group contract holder.

21 "Grievance" means a written complaint submitted in
22 accordance with the dental service corporation's formal



1 grievance procedure by or on behalf of an enrollee regarding any
2 aspect of the dental service corporation relative to the
3 enrollee.

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

7 "Group contract holder" means the person to which a group
8 contract has been issued.

9 "Individual contract" means a contract for dental care
10 services issued to and covering an individual. The individual
11 contract may include dependents of the subscriber.

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

16 "Net worth" means the excess of total assets over total
17 liabilities; provided that, liabilities shall not include fully
18 subordinated debt.

19 "Participating provider" means a provider as defined in
20 this section, who, under an express or implied contract with the
21 dental service corporation or with its contractor or
22 subcontractor, has agreed to provide dental care services to



1 enrollees with an expectation of receiving payment, other than
2 copayment or deductible, directly or indirectly from the dental
3 service corporation.

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

5 "Provider" means any person licensed to practice dentistry
6 as defined in section 448-1.

7 "Replacement coverage" means the benefits provided by a
8 succeeding carrier.

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

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



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

8 **§ -2 Establishment of a dental service corporation;**
9 **certificate of authority.** (a) Any person may apply to the
10 commissioner for a certificate of authority to establish and
11 operate a dental service corporation in compliance with this
12 chapter. No person shall establish or operate a dental service
13 corporation in this State without obtaining a certificate of
14 authority under this chapter. A foreign corporation may qualify
15 under this chapter, subject to its registration to do business
16 in this State in compliance with all provisions of this chapter
17 and other applicable state laws.

18 (b) Any dental service corporation formed and operating
19 pursuant to chapter 423 as of July 1, 2013, shall submit an
20 application for a certificate of authority under subsection (c)
21 within ninety days of July 1, 2013. The dental service
22 corporation may continue to operate until the commissioner acts



1 upon the application. In the event that an application made
2 pursuant to this subsection is denied, the applicant shall
3 thereafter be treated as a dental service corporation whose
4 certificate of authority has been revoked.

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

- 9 (1) A copy of the organizational documents of the
10 applicant, such as the articles of incorporation,
11 articles of association, partnership agreement, trust
12 agreement, or other applicable documents, and all
13 amendments thereto;
- 14 (2) A copy of the bylaws, rules and regulations, or
15 similar document, if any, regulating the conduct of
16 the internal affairs of the applicant;
- 17 (3) A list of the names, addresses, official positions,
18 and biographical information on forms acceptable to
19 the commissioner of the persons who are to be
20 responsible for the conduct of the affairs and day-to-
21 day operations of the applicant, including all members
22 of the board of directors, board of trustees,



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



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

11 (9) A power of attorney duly executed by the applicant, if
12 not domiciled in this State, appointing the
13 commissioner and the commissioner's successors in
14 office, and duly authorized deputies, as the true and
15 lawful attorney of the applicant in and for this State
16 upon whom all lawful process in any legal action or
17 proceeding against the applicant on a cause of action
18 arising in this State may be 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 applicant 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 employees, officers,
18 directors, and partners subject to subsection (a) in an amount
19 not less than \$250,000 for each dental service corporation or a
20 maximum of \$5,000,000 in aggregate maintained on behalf of
21 dental service corporations owned by a common parent
22 corporation, or a sum as may be prescribed by the commissioner.



1 **§ -4 Annual reports.** (a) Each dental service
2 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 dental care services may be
7 obtained, where additional information on access to dental care
8 services may be obtained, a description of the internal
9 grievance procedures, and a telephone number for a subscriber to
10 contact the dental service corporation at no cost to the
11 subscriber.

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

15 **§ -6 Protection against insolvency; net solvency report.**

16 (a) Net worth requirements are as follows:

17 (1) Before issuing any certificate of authority, the
18 commissioner shall require that the dental service
19 corporation has an initial net worth of \$2,000,000 and
20 shall thereafter maintain the minimum net worth
21 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 commissioner;
- 19 (3) The minimum net worth requirement set forth in
20 paragraph (2)(A) shall be phased in as follows:
- 21 (A) Seventy-five per cent of the required amount by
22 January 1, 2016; and



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

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

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

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

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

19 (b) Deposit requirements are as follows:

20 (1) Unless otherwise provided in this subsection, each
21 dental service corporation shall deposit with the
22 commissioner or, at the discretion of the

1 commissioner, with any organization or trustee
2 acceptable to the commissioner through which a
3 custodial or controlled account is utilized, cash,
4 securities, or any combination of these or other
5 measures that are acceptable to the commissioner which
6 at all times shall have a value of not less than
7 \$300,000;

8 (2) A dental service corporation formed and operating
9 pursuant to chapter 423 that is in operation on July
10 1, 2013, shall make a deposit equal to \$150,000.

11 Within one year after January 1, 2014, a dental
12 service corporation originally formed pursuant to
13 chapter 423 that is reconstituted under this chapter
14 and in operation on January 1, 2014, shall make an
15 additional deposit of \$150,000 for a total of
16 \$300,000;

17 (3) Deposits shall be an asset of the dental service
18 corporation in the determination of net worth;

19 (4) All income from deposits shall be an asset of the
20 dental service corporation. A dental service
21 corporation that has made a securities deposit may
22 withdraw that deposit or any part thereof after making



1 a substitute deposit of cash, securities, or any
2 combination of these or other measures of equal amount
3 and value. Any securities shall be approved by the
4 commissioner before being deposited or substituted;

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

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



1 commissioner a certificate to such effect, duly
2 authenticated by the appropriate state official
3 holding the deposit.

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

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



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

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

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



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

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 prepared.
14 Every dental service corporation shall maintain a copy of its
15 current net solvency report on the premises of its primary place
16 of business.

17 (h) The commissioner may order an examination, subject to
18 article 2 of chapter 431, to determine whether a dental service
19 corporation is in compliance with this section. Any dental
20 service corporation that fails or refuses to prepare or produce
21 for review the quarterly net solvency report or any of the



1 documents as required by this section shall be liable for a
2 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 subject
3 to this section shall be an asset of the dental service
4 corporation and may be withdrawn from the deposit or trust
5 account quarterly with the approval of 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 shall be held
17 in trust and shall be used only as provided in this section.

18 The commissioner may use the deposit of an insolvent dental
19 service 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) Any carrier providing
19 replacement coverage with respect to group dental benefits
20 within a period of sixty days from the date of discontinuance of
21 a prior dental service corporation contract or policy providing
22 such dental benefits shall immediately cover all enrollees who



1 were validly covered under the previous dental service
2 corporation contract or policy at the date of discontinuance and
3 who would otherwise be eligible for coverage under the
4 succeeding carrier's contract, regardless of any provisions of
5 the contract relating to active employment.

6 (b) Except to the extent benefits for the condition would
7 have been reduced or excluded under the prior carrier's contract
8 or policy, no provision in a succeeding carrier's contract of
9 replacement coverage which would operate to reduce or exclude
10 benefits on the basis that the condition giving rise to a claim
11 for benefits preexisted the effective date of the succeeding
12 carrier's contract shall be applied with respect to those
13 enrollees validly covered under the prior carrier's contract or
14 policy on the date of discontinuance.

15 **§ -10 Powers of insurers and hospital and medical**
16 **service corporations.** (a) An insurance company licensed in
17 this State, or a hospital or medical service corporation
18 authorized to do business in this State, either directly or
19 through a subsidiary or affiliate, may organize and operate a
20 dental service corporation under the provisions of this chapter.
21 Notwithstanding any other law to the contrary, any two or more
22 insurance companies, hospital or medical service corporations,



1 dental service corporations, or subsidiaries or affiliates
2 thereof, may jointly organize and operate a dental service
3 corporation. The business of insurance is deemed to include the
4 providing of dental care services by a dental service
5 corporation owned or operated by an insurer or a subsidiary
6 thereof.

7 (b) Notwithstanding any contrary provision of laws
8 pertaining to insurance or hospital or medical service
9 corporations under chapter 431 or 432 or 432D, an insurer or a
10 hospital or medical service corporation may contract with a
11 dental service corporation to provide insurance or similar
12 protection against the cost of dental care services provided
13 through dental service corporations and to provide coverage in
14 the event of the failure of the dental service corporation to
15 meet its obligations. The enrollees of a dental service
16 corporation constitute a group permitted under chapter 431 or
17 432 or 432D. Among other things, under such contracts, the
18 insurer or hospital or medical service corporation may make
19 benefit payments to dental service corporations for dental care
20 services rendered by providers.

21 § -11 Examinations. (a) The commissioner may examine
22 the affairs of any dental service corporation or of any



1 providers with whom a dental service corporation has contracts,
2 agreements, or other arrangements as often as is reasonably
3 necessary for the protection of the interests of the people of
4 this State.

5 (b) Every dental service corporation and provider shall
6 submit its books and records for examination and in every way
7 facilitate the completion of an examination by the commissioner.
8 In the event a dental service corporation or a provider fails to
9 comply with the directions of the commissioner, the commissioner
10 may examine the affiliates of the dental service corporation or
11 provider to obtain the information. For the purpose of
12 examinations, the commissioner may administer oaths to and
13 examine the officers and agents of the dental service
14 corporation and the principals of providers concerning their
15 business.

16 (c) The cost of examinations under this section shall be
17 assessed against the dental service corporation or provider
18 being examined and shall be remitted to the commissioner for
19 deposit into the compliance resolution fund.

20 (d) In lieu of the commissioner's own examination, the
21 commissioner may accept the report of an examination made by the
22 commissioner or the appropriate official of another state.



1 **§ -12 Fees.** (a) The commissioner shall collect the
2 following fees:

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

5 (2) For all services subsequent to the issuance of a
6 certificate of authority, including extension of the
7 certificate of authority, \$400.

8 (b) No certificate of authority shall contain an
9 expiration date, but all certificates of authority shall be
10 extended from time to time in order to continue to be valid.
11 When the commissioner issues or extends a certificate of
12 authority, the commissioner shall determine the date prior to
13 which the certificate of authority is next required to be
14 extended, the extension date, and shall so notify the insurer
15 holding the certificate of authority in writing. If the fee for
16 extension is not paid before or on the extension date, a penalty
17 shall be imposed in the amount of fifty per cent of the fee. If
18 the fee and the penalty are not paid within thirty days
19 immediately following the extension date, the commissioner may
20 suspend the certificate of authority and shall not reinstate the
21 certificate of authority until the fee and penalty have been
22 paid.



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

3 **§ -13 Suspension, revocation, or denial of certificate**
4 **of authority.** (a) The commissioner may suspend, revoke, or
5 refuse to extend any certificate of authority issued under this
6 chapter and may deny any application for a certificate of
7 authority if the commissioner finds that:

8 (1) The dental service corporation is operating
9 significantly in contravention of its basic
10 organizational document or in a manner contrary to
11 that described in any other information submitted
12 under section -2, unless amendments to such
13 submissions have been filed with and approved by the
14 commissioner;

15 (2) The dental service corporation or applicant does not
16 provide or arrange for basic dental care services;

17 (3) The dental service corporation or applicant is no
18 longer financially responsible and may reasonably be
19 expected to be unable to meet its obligations to
20 enrollees or prospective enrollees;

21 (4) The dental service corporation has failed to correct,
22 within the time prescribed by subsection (b), any



1 deficiency occurring due to the impairment of the
2 dental service corporation's prescribed minimum net
3 worth;

4 (5) The dental service corporation, applicant, or any
5 person acting on its behalf has advertised or
6 merchandised its services in an untrue,
7 misrepresentative, misleading, deceptive, or unfair
8 manner;

9 (6) The dental service corporation, applicant, or any
10 person acting on its behalf fails or refuses to
11 produce or submit any of the documents required under
12 sections -4 and -6;

13 (7) The operation or continued operation of the dental
14 service corporation would be hazardous to its
15 enrollees; or

16 (8) The dental service corporation or applicant has
17 otherwise failed to substantially comply with this
18 chapter.

19 (b) Whenever the commissioner finds that the net worth
20 maintained by any dental service corporation subject to this
21 chapter is less than the minimum net worth required, the
22 commissioner shall give written notice to the dental service



1 corporation of the amount of the deficiency and shall require
2 the dental service corporation to:

- 3 (1) File with the commissioner a plan for correction of
4 the deficiency acceptable to the commissioner; and
- 5 (2) Correct the deficiency within a reasonable time, not
6 to exceed sixty days, unless an extension of time, not
7 to exceed sixty additional days, is granted by the
8 commissioner.

9 A deficiency in net worth shall be deemed an impairment.
10 Failure to correct an impairment within the prescribed time
11 shall be grounds for suspension or revocation of the certificate
12 of authority or for placing the dental service corporation in
13 conservation, rehabilitation, or liquidation.

14 Unless allowed by the commissioner, no dental service
15 corporation or person acting on its behalf, directly or
16 indirectly, may renew, issue, or deliver any certificate,
17 agreement, or contract of coverage in this State, for which a
18 premium is charged or collected, while the dental service
19 corporation is impaired and the fact of the impairment is known
20 to the dental service corporation or person. The existence of
21 an impairment shall not prevent the issuance or renewal of a
22 certificate, agreement, or contract if an enrollee exercises an



1 option granted under the plan to obtain new, renewed, or
2 converted coverage.

3 (c) Suspension or revocation of a certificate of
4 authority, refusal to extend a certificate of authority, denial
5 of an application, or imposition of an administrative fine
6 pursuant to section -15(a) shall be by written order of the
7 commissioner, which shall be sent to the dental service
8 corporation or applicant by certified or registered mail. The
9 written order shall state the grounds, charges, or conduct on
10 which suspension, revocation, refusal to extend, denial, or
11 administrative fine is based. The dental service corporation or
12 applicant may request in writing a hearing pursuant to section
13 431:2-308. If the dental service corporation or applicant
14 requests a hearing pursuant to this section, the commissioner
15 shall issue a written notice of hearing stating a specific time
16 for the hearing, which may not be less than twenty nor more than
17 thirty days after mailing of the notice of hearing and a
18 specific place for the hearing. Notice of hearing shall be
19 delivered to the dental service corporation or applicant by
20 certified or registered mail.

21 (d) When the certificate of authority of a dental service
22 corporation is suspended, the dental service corporation shall



1 not, during the period of suspension, enroll any additional
2 enrollees except newborn children or other newly acquired
3 dependents of existing subscribers, and shall not engage in any
4 advertising or solicitation whatsoever.

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

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



1 and shall be deposited 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 a dental service
6 corporation and its representatives, or other persons who appear
7 to be involved in such suspected violation, to arrange a
8 conference with the alleged violators or their authorized
9 representatives for the purpose of attempting to ascertain the
10 facts relating to any suspected violation. In the event it
11 appears that any violation has occurred or is threatened, the
12 commissioner may attempt to arrive at an adequate and effective
13 means of correcting or preventing the violation. Proceedings
14 under this subsection shall not be governed by any formal
15 procedural requirements and may be conducted in such manner as
16 the 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 corporation 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 code 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 code or this chapter except with
19 respect to its dental service corporation activities authorized
20 and regulated pursuant to this chapter.

21 (b) Solicitation of enrollees by a dental service
22 corporation granted a certificate of authority, or its



1 representatives, shall not be construed to violate any provision
2 of law relating to solicitation or advertising by health
3 professionals.

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

10 **§ -17 Acquisition of control of or merger of a dental**
11 **service corporation.** No person may make a tender for or a
12 request or invitation for tenders of, enter into an agreement to
13 exchange securities for, or acquire in the open market or
14 otherwise, any voting security of a dental service corporation
15 or enter into any other agreement if, after the consummation
16 thereof, that person, directly or indirectly, or by conversion
17 or by exercise of any right to acquire, would be in control of
18 the dental service corporation, and no person may enter into an
19 agreement to merge or consolidate with or otherwise to acquire
20 control of a dental service corporation, unless, at the time any
21 offer, request, or invitation is made or any agreement is
22 entered into, or prior to the acquisition of the securities if



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

10 **§ -18 Federally funded programs; exemption.**

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

18 **§ -19 Coordination of benefits.** (a) Dental service
19 corporations are required to adopt provisions for coordination
20 of benefits to avoid overinsurance and to provide for the
21 orderly payment of claims when a person is covered by two or
22 more group health insurance or health care plans.



1 (b) Provisions adopted pursuant to subsection (a) for the
2 coordination of benefits shall be consistent, with the
3 coordination of benefits provisions that are in general use in
4 the State for coordinating coverage between two or more group
5 health insurance or health care plans.

6 **§ -20 Disclosure of dental care coverage and benefits.**

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

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

18 **§ -21 Federal law compliance.** All dental service
19 corporations shall comply with applicable federal law. The
20 commissioner shall enforce the consumer protections and market
21 reforms relating to insurance as set forth in the federal
22 Patient Protection and Affordable Care Act, Public Law 111-148."



1 SECTION 2. Chapter 423, Hawaii Revised Statutes, is
2 repealed.

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

5 SECTION 4. This Act shall take effect on July 1, 2112.



Report Title:

Dental Service Corporations; Dental Insurers; Insurance

Description:

Establishes licensing and financial solvency requirements for dental service corporations and repeals chapters 423 and 448D, Hawaii Revised Statutes, containing superseded provisions. Effective July 1, 2112. (SB1073 HD1)

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

