
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 shall not include
21 expenditures for services when a provider has agreed not to bill
22 the enrollee even though the provider is not paid by the dental



1 service corporation, or for services that are guaranteed,
2 insured, or assumed by a person or organization other than the
3 dental service corporation.

4 § -2 **Establishment of a dental service corporation;**
5 **certificate of authority.** (a) Any person may apply to the
6 commissioner for a certificate of authority to establish and
7 operate a dental service corporation in compliance with this
8 chapter. No person shall establish or operate a dental service
9 corporation in this State without obtaining a certificate of
10 authority under this chapter. A foreign corporation may qualify
11 under this chapter, subject to its registration to do business
12 in this State in compliance with all provisions of this chapter
13 and other applicable state laws.

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22 certificate of authority has been revoked.



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

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

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

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



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



1 investments, deposits with the State, income and
2 expense statements anticipated from the start of
3 operations until the organization has had net income
4 for at least one year, and a statement as to the
5 sources of working capital as well as any other
6 sources of funding;

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

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

17 (11) A description of the internal grievance procedures to
18 be utilized for the investigation and resolution of
19 enrollee complaints and grievances;

20 (12) A description of the proposed quality assurance
21 program, including the formal organizational
22 structure, methods for developing criteria, procedures



1 for comprehensive evaluation of the quality of care
2 rendered to enrollees, and processes to initiate
3 corrective action and reevaluation when deficiencies
4 in provider or organizational performance are
5 identified;

6 (13) A description of the procedures to be implemented to
7 meet the protection against insolvency requirements in
8 section -6;

9 (14) A list of the names, addresses, and license numbers of
10 all providers or groups of providers with which the
11 applicant has agreements; and

12 (15) Such other information as the commissioner may
13 require.

14 (d) If the commissioner finds that the applicant has met
15 the requirements for and is fully entitled thereto under the
16 applicable insurance laws, the commissioner shall issue an
17 appropriate certificate of authority to the applicant. If the
18 commissioner does not so find, the commissioner shall deny the
19 applicant the certificate of authority within a reasonable
20 length of time following filing of the completed application by
21 the applicant. A certificate of authority shall be denied only



1 after the commissioner complies with the requirements of section
2 -13.

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

5 § -3 **Fiduciary responsibilities.** (a) Any director,
6 officer, employee, or partner of a dental service corporation
7 who receives, collects, disburses, or invests funds in
8 connection with the activities of an organization shall be
9 responsible for the funds in a fiduciary relationship to the
10 organization.

11 (b) A dental service corporation shall maintain in force a
12 fidelity bond or fidelity insurance on employees, officers,
13 directors, and partners subject to subsection (a) in an amount
14 not less than \$250,000 for each dental service corporation or a
15 maximum of \$5,000,000 in aggregate maintained on behalf of
16 dental service corporations owned by a common parent
17 corporation, or a sum as may be prescribed by the commissioner.

18 § -4 **Annual reports.** (a) Each dental service
19 corporation shall file with the commissioner:

20 (1) An audit, by an independent certified public
21 accountant or an accounting firm designated by the
22 dental service corporation of the financial



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

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

19 (3) A description of the available grievance procedures,
20 the total number of grievances handled through those
21 procedures, a compilation of the causes underlying
22 those grievances, and a summary of the final



1 disposition of those grievances, annually on or before
2 March 1.

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

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

12 § -5 **Information to subscribers.** (a) The dental
13 service corporation shall provide to its subscribers a list of
14 providers and participating providers, upon enrollment and
15 reenrollment.

16 (b) Every dental service corporation shall provide to its
17 subscribers notice of any material change in the operation of
18 the organization that will affect them directly within thirty
19 days of the material change.

20 (c) The dental service corporation shall provide to
21 subscribers information on how dental care services may be
22 obtained, where additional information on access to dental care



1 services may be obtained, a description of the internal
2 grievance procedures, and a telephone number for a subscriber to
3 contact the dental service corporation at no cost to the
4 subscriber.

5 (d) For the purpose of this section, "material change"
6 means any major change in provider or participating provider
7 agreements.

8 § -6 **Protection against insolvency; net solvency report.**

9 (a) Net worth requirements are as follows:

10 (1) Before issuing any certificate of authority, the
11 commissioner shall require that the dental service
12 corporation has an initial net worth of \$2,000,000 and
13 shall thereafter maintain the minimum net worth
14 required under paragraph (2);

15 (2) Except as provided in paragraphs (3) and (4), every
16 dental service corporation shall maintain a minimum
17 net worth equal to the greater of:

18 (A) \$2,000,000;

19 (B) Two per cent of annual premium revenues as
20 reported on the most recent annual financial
21 statement filed with the commissioner on the
22 first \$150,000,000 of premium revenues and one



- 1 per cent of annual premium revenues on the
2 premium revenues in excess of \$150,000,000;
- 3 (C) An amount equal to the sum of three months
4 uncovered dental care expenditures as reported on
5 the most recent financial statement filed with
6 the commissioner; or
- 7 (D) An amount equal to eight per cent of annual
8 dental care expenditures except those paid on a
9 capitated basis as reported on the most recent
10 financial statement filed with the commissioner;
- 11 (3) The minimum net worth requirement set forth in
12 paragraph (2)(A) shall be phased in as follows:
- 13 (A) Seventy-five per cent of the required amount by
14 January 1, 2016; and
- 15 (B) One hundred per cent of the required amount by
16 December 31, 2017; and
- 17 (4) The following shall apply in determining compliance
18 with the requirements of this subsection:
- 19 (A) In determining net worth, no debt shall be
20 considered fully subordinated unless the
21 subordination clause is in a form acceptable to
22 the commissioner. Any interest obligation



1 relating to the repayment of any subordinated
2 debt shall be similarly subordinated;

3 (B) The interest expenses relating to the repayment
4 of any fully subordinated debt shall be
5 considered covered expenses; and

6 (C) Any debt incurred by a note meeting the
7 requirements of this section, and otherwise
8 acceptable to the commissioner, shall not be
9 considered a liability and shall be recorded as
10 equity.

11 (b) Deposit requirements are as follows:

12 (1) Unless otherwise provided in this subsection, each
13 dental service corporation shall deposit with the
14 commissioner or, at the discretion of the
15 commissioner, with any organization or trustee
16 acceptable to the commissioner through which a
17 custodial or controlled account is utilized, cash,
18 securities, or any combination of these or other
19 measures that are acceptable to the commissioner which
20 at all times shall have a value of not less than
21 \$300,000;



- 1 (2) A dental service corporation formed and operating
2 pursuant to chapter 423 that is in operation on July
3 1, 2013, shall make a deposit equal to \$150,000.
4 Within one year after January 1, 2014, a dental
5 service corporation originally formed pursuant to
6 chapter 423 that is reconstituted under this chapter
7 and in operation on January 1, 2014, shall make an
8 additional deposit of \$150,000 for a total of
9 \$300,000;
- 10 (3) Deposits shall be an asset of the dental service
11 corporation in the determination of net worth;
- 12 (4) All income from deposits shall be an asset of the
13 dental service corporation. A dental service
14 corporation that has made a securities deposit may
15 withdraw that deposit or any part thereof after making
16 a substitute deposit of cash, securities, or any
17 combination of these or other measures of equal amount
18 and value. Any securities shall be approved by the
19 commissioner before being deposited or substituted;
- 20 (5) The deposit shall be used to protect the interests of
21 the dental service corporation's enrollees and to
22 assure continuation of dental care services to



1 enrollees of a dental service corporation which is in
2 rehabilitation or conservation. The commissioner may
3 use the deposit for administrative costs directly
4 attributable to a receivership or liquidation. If the
5 dental service corporation is placed in receivership
6 or liquidation, the deposit shall be an asset subject
7 to the provisions of article 15 of chapter 431; and

8 (6) The commissioner may reduce or eliminate the deposit
9 requirement if the dental service corporation deposits
10 with the director of finance of this State, or the
11 commissioner, or other official body of the state or
12 jurisdiction of domicile of such dental service
13 corporation, for the protection of all subscribers and
14 enrollees, wherever located, cash, acceptable
15 securities, or surety, and delivers to the
16 commissioner a certificate to such effect, duly
17 authenticated by the appropriate state official
18 holding the deposit.

19 (c) Every dental service corporation, when determining
20 liabilities, shall include an amount estimated in the aggregate
21 to provide for any unearned premium and for the payment of all
22 claims for dental care expenditures which have been incurred,



1 whether reported or unreported, which are unpaid and for which
2 the organization is or may be liable, and to provide for the
3 expense of adjustment or settlement of claims. These
4 liabilities shall be computed in accordance with rules adopted
5 by the commissioner upon reasonable consideration of the
6 ascertained experience and character of the dental service
7 corporation.

8 (d) Every contract between a dental service corporation
9 and a participating provider shall be in writing and shall set
10 forth that in the event the dental service corporation fails to
11 pay for dental care services as set forth in the contract, the
12 subscriber or enrollee shall not be liable to the provider for
13 any sums owed by the dental service corporation. In the event
14 that a contract with a participating provider has not been
15 reduced to writing as required by this subsection or that a
16 contract fails to contain the required prohibition, the
17 participating provider shall not collect or attempt to collect
18 from the subscriber or enrollee sums owed by the dental service
19 corporation. No participating provider, or agent, trustee, or
20 assignee thereof, may maintain any action at law against a
21 subscriber or enrollee to collect sums owed by the dental
22 service corporation.



1 (e) The commissioner shall require that each dental
2 service corporation have a plan for handling insolvency which
3 allows for continuation of benefits for the duration of the
4 contract period for which premiums have been paid. In
5 considering such a plan, the commissioner may require:

6 (1) Insurance to cover the expenses to be paid for
7 continued benefits after an insolvency;

8 (2) Provisions in participating provider contracts that
9 obligate the provider to provide dental care services
10 for the duration of the period after the dental
11 service corporation's insolvency for which premium
12 payment has been made;

13 (3) Insolvency reserves;

14 (4) Acceptable letters of credit; or

15 (5) Any other arrangements acceptable to the commissioner
16 to assure that benefits are continued as specified in
17 this subsection.

18 (f) An agreement to provide dental care services between a
19 participating provider and a dental service corporation shall
20 require that a participating provider shall give the dental
21 service corporation at least sixty days' advance notice in the
22 event of termination.



1 (g) Each dental service corporation shall prepare for
2 review by the commissioner on or before the forty-fifth day of
3 each quarter, a copy of its quarterly net solvency report
4 verified by at least two principal officers. The commissioner
5 may prescribe the forms on which the reports are to be prepared.
6 Every dental service corporation shall maintain a copy of its
7 current net solvency report on the premises of its primary place
8 of business.

9 (h) The commissioner may order an examination, subject to
10 article 2 of chapter 431, to determine whether a dental service
11 corporation is in compliance with this section. Any dental
12 service corporation that fails or refuses to prepare or produce
13 for review the quarterly net solvency report or any of the
14 documents as required by this section shall be liable for a
15 penalty pursuant to section -4(c).

16 § -7 **Uncovered expenditures insolvency deposit.** (a)
17 If, at any time, uncovered expenditures exceed ten per cent of
18 total dental care expenditures, a dental service corporation
19 shall place with the commissioner or with any organization or
20 trustee acceptable to the commissioner through which a custodial
21 or controlled account is maintained, an uncovered expenditures
22 insolvency deposit consisting of cash or securities that are



1 acceptable to the commissioner. Such deposit shall have, at all
2 times, a fair market value in an amount of one-hundred-twenty
3 per cent of the dental service corporation's outstanding
4 liability for uncovered expenditures for enrollees in this
5 State, including incurred but not reported claims, and shall be
6 calculated as of the first day of the month and maintained for
7 the remainder of the month. If a dental service corporation is
8 not otherwise required to file a quarterly report, it shall file
9 a report within forty-five days of the end of the calendar
10 quarter with information sufficient to demonstrate compliance
11 with this section.

12 (b) The deposit required under this section is in addition
13 to the deposit required under section -6 and is an asset of
14 the dental service corporation in the determination of net
15 worth. All income from the deposits or trust accounts subject
16 to this section shall be an asset of the dental service
17 corporation and may be withdrawn from the deposit or trust
18 account quarterly with the approval of the commissioner.

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

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



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

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

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

7 (d) The deposit required under this section shall be held
8 in trust and shall be used only as provided in this section.
9 The commissioner may use the deposit of an insolvent dental
10 service corporation for administrative costs associated with
11 administering the deposit and payment of claims of enrollees of
12 this State for uncovered expenditures in this State. Claims for
13 uncovered expenditures shall be paid on a pro rata basis based
14 on assets available to pay such ultimate liability for incurred
15 expenditures. Partial distribution may be made pending final
16 distribution. Any amount of the deposit remaining shall be paid
17 into the liquidation or receivership of the dental service
18 corporation.

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

21 (f) The commissioner may require dental service
22 corporations to file annual, quarterly, or more frequent reports



1 as the commissioner deems necessary to demonstrate compliance
2 with this section. The commissioner may require that the
3 reports include liability for uncovered expenditures as well as
4 an audit opinion.

5 § -8 **Reserve credit for reinsurance.** Any dental service
6 corporation that takes credit for reserves on risks ceded to a
7 reinsurer shall be subject to provisions of article 4A of
8 chapter 431.

9 § -9 **Replacement coverage.** (a) Any carrier providing
10 replacement coverage with respect to group dental benefits
11 within a period of sixty days from the date of discontinuance of
12 a prior dental service corporation contract or policy providing
13 such dental benefits shall immediately cover all enrollees who
14 were validly covered under the previous dental service
15 corporation contract or policy at the date of discontinuance and
16 who would otherwise be eligible for coverage under the
17 succeeding carrier's contract, regardless of any provisions of
18 the contract relating to active employment.

19 (b) Except to the extent benefits for the condition would
20 have been reduced or excluded under the prior carrier's contract
21 or policy, no provision in a succeeding carrier's contract of
22 replacement coverage which would operate to reduce or exclude



1 benefits on the basis that the condition giving rise to a claim
2 for benefits preexisted the effective date of the succeeding
3 carrier's contract shall be applied with respect to those
4 enrollees validly covered under the prior carrier's contract or
5 policy on the date of discontinuance.

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

20 (b) Notwithstanding any contrary provision of laws
21 pertaining to insurance or hospital or medical service
22 corporations under chapter 431 or 432 or 432D, an insurer or a



1 hospital or medical service corporation may contract with a
2 dental service corporation to provide insurance or similar
3 protection against the cost of dental care services provided
4 through dental service corporations and to provide coverage in
5 the event of the failure of the dental service corporation to
6 meet its obligations. The enrollees of a dental service
7 corporation constitute a group permitted under chapter 431 or
8 432 or 432D. Among other things, under such contracts, the
9 insurer or hospital or medical service corporation may make
10 benefit payments to dental service corporations for dental care
11 services rendered by providers.

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

18 (b) Every dental service corporation and provider shall
19 submit its books and records for examination and in every way
20 facilitate the completion of an examination by the commissioner.
21 In the event a dental service corporation or a provider fails to
22 comply with the directions of the commissioner, the commissioner



1 may examine the affiliates of the dental service corporation or
2 provider to obtain the information. For the purpose of
3 examinations, the commissioner may administer oaths to and
4 examine the officers and agents of the dental service
5 corporation and the principals of providers concerning their
6 business.

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

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

14 § -12 Fees. (a) The commissioner shall collect the
15 following fees:

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

18 (2) For all services subsequent to the issuance of a
19 certificate of authority, including extension of the
20 certificate of authority, \$400.

21 (b) No certificate of authority shall contain an
22 expiration date, but all certificates of authority shall be



1 extended from time to time in order to continue to be valid.
2 When the commissioner issues or extends a certificate of
3 authority, the commissioner shall determine the date prior to
4 which the certificate of authority is next required to be
5 extended, the extension date, and shall so notify the insurer
6 holding the certificate of authority in writing. If the fee for
7 extension is not paid before or on the extension date, a penalty
8 shall be imposed in the amount of fifty per cent of the fee. If
9 the fee and the penalty are not paid within thirty days
10 immediately following the extension date, the commissioner may
11 suspend the certificate of authority and shall not reinstate the
12 certificate of authority until the fee and penalty have been
13 paid.

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

16 **§ -13 Suspension, revocation, or denial of certificate**
17 **of authority.** (a) The commissioner may suspend, revoke, or
18 refuse to extend any certificate of authority issued under this
19 chapter and may deny any application for a certificate of
20 authority if the commissioner finds that:

21 (1) The dental service corporation is operating
22 significantly in contravention of its basic



1 organizational document or in a manner contrary to
2 that described in any other information submitted
3 under section -2, unless amendments to such
4 submissions have been filed with and approved by the
5 commissioner;

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

8 (3) The dental service corporation or applicant is no
9 longer financially responsible and may reasonably be
10 expected to be unable to meet its obligations to
11 enrollees or prospective enrollees;

12 (4) The dental service corporation has failed to correct,
13 within the time prescribed by subsection (b), any
14 deficiency occurring due to the impairment of the
15 dental service corporation's prescribed minimum net
16 worth;

17 (5) The dental service corporation, applicant, or any
18 person acting on its behalf has advertised or
19 merchandised its services in an untrue,
20 misrepresentative, misleading, deceptive, or unfair
21 manner;



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

5 (7) The operation or continued operation of the dental
6 service corporation would be hazardous to its
7 enrollees; or

8 (8) The dental service corporation or applicant has
9 otherwise failed to substantially comply with this
10 chapter.

11 (b) Whenever the commissioner finds that the net worth
12 maintained by any dental service corporation subject to this
13 chapter is less than the minimum net worth required, the
14 commissioner shall give written notice to the dental service
15 corporation of the amount of the deficiency and shall require
16 the dental service corporation to:

17 (1) File with the commissioner a plan for correction of
18 the deficiency acceptable to the commissioner; and

19 (2) Correct the deficiency within a reasonable time, not
20 to exceed sixty days, unless an extension of time, not
21 to exceed sixty additional days, is granted by the
22 commissioner.



1 A deficiency in net worth shall be deemed an impairment.
2 Failure to correct an impairment within the prescribed time
3 shall be grounds for suspension or revocation of the certificate
4 of authority or for placing the dental service corporation in
5 conservation, rehabilitation, or liquidation.

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

17 (c) Suspension or revocation of a certificate of
18 authority, refusal to extend a certificate of authority, denial
19 of an application, or imposition of an administrative fine
20 pursuant to section -15(a) shall be by written order of the
21 commissioner, which shall be sent to the dental service
22 corporation or applicant by certified or registered mail. The



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

13 (d) When the certificate of authority of a dental service
14 corporation is suspended, the dental service corporation shall
15 not, during the period of suspension, enroll any additional
16 enrollees except newborn children or other newly acquired
17 dependents of existing subscribers, and shall not engage in any
18 advertising or solicitation whatsoever.

19 (e) When the certificate of authority of a dental service
20 corporation is revoked, the dental service corporation,
21 immediately following the effective date of the order of
22 revocation, shall conduct no further business except as may be



1 essential to the orderly conclusion of the affairs of such
2 organization. It shall engage in no further advertising or
3 solicitation whatsoever. The commissioner, by written order,
4 may permit any further operation of the organization as the
5 commissioner may find to be in the best interest of enrollees,
6 to the end that enrollees will be afforded the greatest
7 practical opportunity to obtain continuing dental care coverage.

8 § -14 **Summary orders and supervision.** (a) Whenever the
9 commissioner determines that the financial condition of any
10 dental service corporation is such that its continued operation
11 might be hazardous to its enrollees, creditors, or the general
12 public, or that it has violated any provision of this chapter,
13 the commissioner, after notice and hearing, may order the dental
14 service corporation to take such action as may be reasonably
15 necessary to rectify such condition or violation, including but
16 not limited to:

- 17 (1) Reducing the total amount of present and potential
18 liability for benefits by reinsurance or other method
19 acceptable to the commissioner;
- 20 (2) Reducing the volume of new business being accepted;
- 21 (3) Reducing expenses by specified methods;



1 (4) Suspending or limiting the writing of new business for
2 a period of time;

3 (5) Increasing the dental service corporation's capital
4 and surplus by contribution; or

5 (6) Taking any other steps as the commissioner may deem
6 appropriate under the circumstances.

7 (b) For purposes of this section, the violation by a
8 dental service corporation of any law of this State to which the
9 dental service corporation is subject shall be deemed a
10 violation of this chapter.

11 (c) The commissioner is authorized to set uniform
12 standards and criteria for early warning that the continued
13 operation of any dental service corporation might be hazardous
14 to its enrollees, creditors, or the general public, and to set
15 standards for evaluating the financial condition of any dental
16 service corporation, which standards shall be consistent with
17 the purposes expressed in subsection (a).

18 (d) The remedies and measures available to the
19 commissioner under this section shall be in addition to, and not
20 in lieu of, the remedies and measures available to the
21 commissioner under the provisions of article 15 of chapter 431.



1 § -15 **Administrative fines and enforcement.** (a) The
2 commissioner, in addition to or in lieu of suspension or
3 revocation of a certificate of authority pursuant to section
4 -13, may levy an administrative fine upon a dental service
5 corporation in an amount not less than \$500 and not more than
6 \$50,000 pursuant to a written order. The dental service
7 corporation may request, in writing, a hearing pursuant to
8 section -13. The order levying the fine shall specify the
9 period within which the fine shall be fully paid, which shall
10 not be less than thirty nor more than forty-five days from the
11 date of the order. Upon failure to pay the fine when due, the
12 commissioner shall revoke the dental service corporation's
13 certificate of authority, if not already revoked, and the fine
14 shall be recovered in a civil action brought on behalf of the
15 commissioner by the attorney general. Any fine so collected
16 shall be remitted by the commissioner to the director of finance
17 and shall be deposited to the credit of the compliance
18 resolution fund.

19 (b) If the commissioner, for any reason, has cause to
20 believe that any violation of this chapter has occurred or is
21 threatened, the commissioner may give notice to a dental service
22 corporation and its representatives, or other persons who appear



1 to be involved in such suspected violation, to arrange a
2 conference with the alleged violators or their authorized
3 representatives for the purpose of attempting to ascertain the
4 facts relating to any suspected violation. In the event it
5 appears that any violation has occurred or is threatened, the
6 commissioner may attempt to arrive at an adequate and effective
7 means of correcting or preventing the violation. Proceedings
8 under this subsection shall not be governed by any formal
9 procedural requirements and may be conducted in such manner as
10 the commissioner may deem appropriate under the circumstances.
11 However, unless consented to by the dental service corporation,
12 no order may result from a conference until the requirements of
13 this section are satisfied.

14 (c) The commissioner may issue an order directing a dental
15 service corporation or a representative of a dental service
16 corporation to cease and desist from engaging in any act or
17 practice in violation of the provisions of this chapter. Any
18 person aggrieved by an order of the commissioner under this
19 section may obtain judicial review of the order in the manner
20 provided for by chapter 91.

21 (d) In the case of any violation of the provisions of this
22 chapter, if the commissioner elects not to issue a cease and



1 desist order, or in the event of noncompliance with a cease and
2 desist order issued pursuant to subsection (c), the commissioner
3 may institute a proceeding to obtain injunctive or other
4 appropriate relief in any court of competent jurisdiction.

5 § -16 **Statutory construction and relationship to other**
6 **laws.** (a) Except as provided in subsection (c) and otherwise
7 provided in this chapter, the insurance code shall not apply to
8 the activities authorized and regulated under this chapter of
9 any dental service corporation granted a certificate of
10 authority under this chapter. This chapter shall not apply to
11 an insurer or dental service corporation licensed and regulated
12 pursuant to the insurance code or this chapter except with
13 respect to its dental service corporation activities authorized
14 and regulated pursuant to this chapter.

15 (b) Solicitation of enrollees by a dental service
16 corporation granted a certificate of authority, or its
17 representatives, shall not be construed to violate any provision
18 of law relating to solicitation or advertising by health
19 professionals.

20 (c) Article 2, article 2D, article 13, and article 15 of
21 chapter 431, and the powers granted by those provisions to the
22 commissioner shall apply to dental service corporations, so long



1 as the application in any particular case is in compliance with
2 and is not preempted by applicable federal statutes and
3 regulations.

4 § -17 **Acquisition of control of or merger of a dental**
5 **service corporation.** No person may make a tender for or a
6 request or invitation for tenders of, enter into an agreement to
7 exchange securities for, or acquire in the open market or
8 otherwise, any voting security of a dental service corporation
9 or enter into any other agreement if, after the consummation
10 thereof, that person, directly or indirectly, or by conversion
11 or by exercise of any right to acquire, would be in control of
12 the dental service corporation, and no person may enter into an
13 agreement to merge or consolidate with or otherwise to acquire
14 control of a dental service corporation, unless, at the time any
15 offer, request, or invitation is made or any agreement is
16 entered into, or prior to the acquisition of the securities if
17 no offer or agreement is involved, the person has filed with the
18 commissioner and has sent to the dental service corporation
19 information required by section 431:11-104 and the offer,
20 request, invitation, agreement, or acquisition has been approved
21 by the commissioner. Approval by the commissioner shall be
22 governed by section 431:11-104(d); provided that if no action is



1 taken by the commissioner within thirty days, the offer,
2 request, invitation, agreement, or acquisition shall be deemed
3 approved.

4 **§ -18 Federally funded programs; exemption.**

5 Requirements provided in this chapter relating to mandated
6 coverages or essential health benefits shall not be applicable
7 to any dental service corporation offering dental insurance
8 under a federally funded program under the Social Security Act,
9 as amended; provided that this exemption shall apply only to
10 that part of the dental service corporation's business under the
11 federally funded program.

12 **§ -19 Coordination of benefits.** (a) Dental service
13 corporations are required to adopt provisions for coordination
14 of benefits to avoid overinsurance and to provide for the
15 orderly payment of claims when a person is covered by two or
16 more group health insurance or health care plans.

17 (b) Provisions adopted pursuant to subsection (a) for the
18 coordination of benefits shall be consistent with the
19 coordination of benefits provisions that are in general use in
20 the State for coordinating coverage between two or more group
21 health insurance or health care plans.



1 § -20 **Disclosure of dental care coverage and benefits.**

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

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

13 § -21 **Federal law compliance.** All dental service
14 corporations shall comply with applicable federal law. The
15 commissioner shall enforce the consumer protections and market
16 reforms relating to insurance as set forth in the federal
17 Patient Protection and Affordable Care Act, Public Law 111-148."

18 SECTION 2. Chapter 423, Hawaii Revised Statutes, is
19 repealed.

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

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



Report Title:

Dental Service Corporations; Dental Insurers; Insurance

Description:

Establishes certification 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 HD2)

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

