

Hawaii State Legislature  
State House of Representatives  
Committee on Health

State Representative Della Au Belatti, Chair  
State Representative Dee Morikawa, Vice Chair  
Committee on Judiciary

Friday, February 1, 2013, 8:30 a.m. Room 329  
House Bill 842 Relating to Dental Service Corporations

Honorable Chair Della Au Belatt, Vice Chair Dee Morikawa and  
members of the House Committee on Health,

My name is Russel Yamashita and I am the legislative representative for the Hawaii Dental Association (HDA) and its 960 member dentists. I appreciate the opportunity to testify in opposition of House Bill 842 Relating to Dental Service Corporations. The bill before you today would repeal the current statutory authority which establishes the criteria and corporate structure of the currently established dental service corporation. The “purpose” of this legislation is allegedly to provide an “insurance” frame work for dental service corporations in order to be in compliance the Affordable Care Act.

In reviewing this bill, the alleged “purpose” is achieved with a substantial number of radical changes to the ownership, governance and licensing laws of Hawaii. So radical and, for the lack of a better term, sneaky are these changes, that the insurance division is quite unaware of the real ramifications of this bill.

In as much as the HDA wishes to provide for a smooth transition with the Affordable Care Act, attached are the proposed changes to the current statute, Chapter 448D, which will accomplish the needed changes to the laws regulating dental service corporations. These changes should be substituted for the changes that the current version of this bill and will meet the objectives stated for this legislation.

In lieu of these changes, the HDA will be in opposition to this legislation as it now written and would request that the bill be held if the proposed amendments to Chapter 448D are not substituted for the current language.

448D-1 DEFINITIONS (ADD FOLLOWING DEFINITION)

"COVERED SERVICES" MEANS DENTAL CARE SERVICES FOR WHICH A REIMBURSEMENT IS AVAILABLE UNDER AN ENROLLEE'S DENTAL SERVICE PLAN, OR FOR WHICH A REIMBURSEMENT WOULD BE AVAILABLE BUT FOR THE APPLICATION OF CONTRACTUAL LIMITATIONS SUCH AS DEDUCTIBLES, COPAYMENTS, COINSURANCE, WAITING PERIODS, ANNUAL OR LIFETIME MAXIMUMS, FREQUENCY LIMITATIONS, ALTERNATIVE BENEFIT PAYMENTS, OR ANY OTHER LIMITATION.

(Add following as new sections to Chap. 448D)

448D-3 ESTABLISHMENT OF A DENTAL SERVICE CORPORATION.

(A) ANY PERSON MAY APPLY TO THE DIRECTOR FOR A CERTIFICATE OF AUTHORITY TO ESTABLISH AND OPERATE A DENTAL SERVICE CORPORATION IN COMPLIANCE WITH THIS CHAPTER AND CHAPTER 423. NO PERSON SHALL ESTABLISH OR OPERATE A DENTAL SERVICE CORPORATION IN THIS STATE WITHOUT OBTAINING A CERTIFICATE OF AUTHORITY UNDER THIS CHAPTER.

(B) ANY DENTAL SERVICE CORPORATION FORMED AND OPERATING PURSUANT TO CHAPTER 423 AS OF JULY 1, 2013, SHALL SUBMIT AN APPLICATION FOR A CERTIFICATE OF AUTHORITY UNDER SUBSECTION (C) WITHIN NINETY DAYS OF JULY 1, 2013. THE APPLICANT MAY CONTINUE TO OPERATE UNTIL THE DIRECTOR ACTS UPON THE APPLICATION. IN THE EVENT THAT AN APPLICATION MADE PURSUANT TO THIS SUBSECTION IS DENIED, THE APPLICANT SHALL THEREAFTER BE TREATED AS A DENTAL SERVICE CORPORATION WHOSE CERTIFICATE OF AUTHORITY HAS BEEN REVOKED.

(C) EACH APPLICATION FOR A CERTIFICATE OF AUTHORITY SHALL BE VERIFIED BY AN OFFICER OR AUTHORIZED REPRESENTATIVE OF THE APPLICANT, SHALL BE IN A FORM PRESCRIBED BY THE DIRECTOR, AND SHALL SET FORTH OR BE ACCOMPANIED BY THE FOLLOWING:

- (1) A COPY OF THE ORGANIZATIONAL DOCUMENTS OF THE APPLICANT, SUCH AS THE ARTICLES OF INCORPORATION, ARTICLES OF ASSOCIATION, PARTNERSHIP AGREEMENT, TRUST AGREEMENT, OR OTHER APPLICABLE DOCUMENTS, AND ALL AMENDMENTS THERETO;
- (2) A COPY OF THE BYLAWS, RULES AND REGULATIONS, OR SIMILAR DOCUMENT, IF ANY, REGULATING THE CONDUCT OF THE INTERNAL AFFAIRS OF THE APPLICANT;
- (3) A LIST OF THE NAMES, ADDRESSES, OFFICIAL POSITIONS, AND BIOGRAPHICAL INFORMATION ON FORMS ACCEPTABLE TO THE DIRECTOR OF THE PERSONS WHO ARE TO BE RESPONSIBLE FOR THE CONDUCT OF THE AFFAIRS AND DAY-TO-DAY OPERATIONS OF THE APPLICANT, INCLUDING ALL MEMBERS OF THE BOARD OF

DIRECTORS, BOARD OF TRUSTEES, EXECUTIVE COMMITTEE OR OTHER GOVERNING BOARD OR COMMITTEE, AND THE PRINCIPAL OFFICERS IN THE CASE OF A CORPORATION, OR THE PARTNERS OR MEMBERS IN THE CASE OF A PARTNERSHIP OR ASSOCIATION;

- (4) A COPY OF ANY CONTRACT FORM MADE OR TO BE MADE BETWEEN ANY CLASS OF PROVIDERS AND THE DENTAL SERVICE CORPORATION AND A COPY OF ANY CONTRACT MADE OR TO BE MADE BETWEEN THIRD PARTY ADMINISTRATORS, MARKETING CONSULTANTS, OR PERSONS LISTED IN PARAGRAPH (3) AND THE DENTAL SERVICE CORPORATION;
- (5) A COPY OF THE FORM OF EVIDENCE OF COVERAGE TO BE ISSUED TO THE ENROLLEES;
- (6) A COPY OF THE FORM OF GROUP CONTRACT, IF ANY, WHICH IS TO BE ISSUED TO EMPLOYERS, UNIONS, TRUSTEES, OR OTHER ORGANIZATIONS;
- (7) FINANCIAL STATEMENTS SHOWING THE APPLICANT'S ASSETS, LIABILITIES, AND SOURCES OF FINANCIAL SUPPORT, AND BOTH A COPY OF THE APPLICANT'S MOST RECENT AUDITED FINANCIAL STATEMENT AND AN UNAUDITED CURRENT FINANCIAL STATEMENT;
- (8) A FINANCIAL FEASIBILITY PLAN WHICH INCLUDES DETAILED ENROLLMENT PROJECTIONS, THE METHODOLOGY FOR DETERMINING PREMIUM RATES TO BE CHARGED DURING THE FIRST TWELVE MONTHS OF OPERATIONS CERTIFIED BY AN ACTUARY OR OTHER QUALIFIED PERSON, A PROJECTION OF BALANCE SHEETS, CASH FLOW STATEMENTS SHOWING ANY CAPITAL EXPENDITURES, PURCHASE AND SALE OF INVESTMENTS, DEPOSITS WITH THE STATE, INCOME AND EXPENSE STATEMENTS ANTICIPATED FROM THE START OF OPERATIONS UNTIL THE ORGANIZATION HAS HAD NET INCOME FOR AT LEAST ONE YEAR, AND A STATEMENT AS TO THE SOURCES OF WORKING CAPITAL AS WELL AS ANY OTHER SOURCES OF FUNDING;
- (9) A POWER OF ATTORNEY DULY EXECUTED BY SUCH APPLICANT, IF NOT DOMICILED IN THIS STATE, APPOINTING THE DIRECTOR AND THE DIRECTOR'S SUCCESSORS IN OFFICE, AND DULY AUTHORIZED DEPUTIES, AS THE TRUE AND LAWFUL ATTORNEY OF SUCH APPLICANT IN AND FOR THIS STATE UPON WHOM ALL LAWFUL PROCESS IN ANY LEGAL ACTION OR PROCEEDING AGAINST THE DENTAL SERVICE CORPORATION ON A CAUSE OF ACTION ARISING IN THIS STATE MAY BE SERVED;
- (10) A STATEMENT OR MAP REASONABLY DESCRIBING THE GEOGRAPHIC AREA OR AREAS TO BE SERVED;
- (11) A DESCRIPTION OF THE INTERNAL GRIEVANCE PROCEDURES TO BE UTILIZED FOR THE INVESTIGATION AND RESOLUTION OF ENROLLEE COMPLAINTS AND GRIEVANCES;
- (12) A DESCRIPTION OF THE PROPOSED QUALITY ASSURANCE PROGRAM, INCLUDING THE FORMAL ORGANIZATIONAL STRUCTURE,

METHODS FOR DEVELOPING CRITERIA, PROCEDURES FOR COMPREHENSIVE EVALUATION OF THE QUALITY OF CARE RENDERED TO ENROLLEES, AND PROCESSES TO INITIATE CORRECTIVE ACTION AND REEVALUATION WHEN DEFICIENCIES IN PROVIDER OR ORGANIZATIONAL PERFORMANCE ARE IDENTIFIED;

- (13) A DESCRIPTION OF THE PROCEDURES TO BE IMPLEMENTED TO MEET THE PROTECTION AGAINST INSOLVENCY REQUIREMENTS IN SECTION XX;
- (14) A LIST OF THE NAMES, ADDRESSES, AND LICENSE NUMBERS OF ALL PROVIDERS OR GROUPS OF PROVIDERS WITH WHICH THE DENTAL SERVICE CORPORATION HAS AGREEMENTS; AND
- (15) SUCH OTHER INFORMATION AS THE DIRECTOR MAY REQUIRE.

(D) IF THE DIRECTOR FINDS THAT THE APPLICANT HAS MET THE REQUIREMENTS FOR AND IS FULLY ENTITLED THERETO UNDER THE APPLICABLE INSURANCE LAWS, THE DIRECTOR SHALL ISSUE AN APPROPRIATE CERTIFICATE OF AUTHORITY TO THE APPLICANT. IF THE DIRECTOR DOES NOT SO FIND, THE DIRECTOR SHALL DENY THE APPLICANT THE CERTIFICATE OF AUTHORITY WITHIN A REASONABLE LENGTH OF TIME FOLLOWING FILING OF THE COMPLETED APPLICATION BY THE APPLICANT. A CERTIFICATE OF AUTHORITY SHALL BE DENIED ONLY AFTER THE DIRECTOR COMPLIES WITH THE REQUIREMENTS OF SECTION YY.

(E) THE DIRECTOR MAY ADOPT RULES UNDER CHAPTER 91 FOR THE IMPLEMENTATION AND ADMINISTRATION OF THIS CHAPTER.

#### 448D-4 ANNUAL AND QUARTERLY REPORTS.

(A) EACH DENTAL SERVICE CORPORATION SHALL FILE WITH THE DIRECTOR:

- (1) AN AUDIT, BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT OR AN ACCOUNTING FIRM DESIGNATED BY THE DENTAL SERVICE CORPORATION OF THE FINANCIAL STATEMENTS, REPORTING THE FINANCIAL CONDITION AND RESULTS OF OPERATIONS OF THE DENTAL SERVICE CORPORATION, ANNUALLY ON OR BEFORE JUNE 1, OR A LATER DATE AS THE DIRECTOR UPON REQUEST OR FOR CAUSE MAY SPECIFY. THE DENTAL SERVICE CORPORATION, ON AN ANNUAL BASIS AND PRIOR TO THE COMMENCEMENT OF THE AUDIT, SHALL NOTIFY THE DIRECTOR IN WRITING OF THE NAME AND ADDRESS OF THE PERSON OR FIRM RETAINED TO CONDUCT THE ANNUAL AUDIT. THE DIRECTOR MAY DISAPPROVE THE DENTAL SERVICE CORPORATION'S DESIGNATION WITHIN FIFTEEN DAYS OF RECEIPT OF THE DENTAL SERVICE CORPORATION'S NOTICE, AND THE DENTAL SERVICE CORPORATION SHALL BE

REQUIRED TO DESIGNATE ANOTHER INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT OR ACCOUNTING FIRM;

- (2) A LIST OF THE PROVIDERS WHO HAVE EXECUTED A CONTRACT THAT COMPLIES WITH SECTION XX, ANNUALLY ON OR BEFORE MARCH 1; AND
- (3) A DESCRIPTION OF THE AVAILABLE GRIEVANCE PROCEDURES, THE TOTAL NUMBER OF GRIEVANCES HANDLED THROUGH THOSE PROCEDURES, A COMPILATION OF THE CAUSES UNDERLYING THOSE GRIEVANCES, AND A SUMMARY OF THE FINAL DISPOSITION OF THOSE GRIEVANCES, ANNUALLY ON OR BEFORE MARCH 1.

(B) THE DIRECTOR MAY REQUIRE ADDITIONAL REPORTS AS ARE DEEMED NECESSARY AND APPROPRIATE TO ENABLE THE DIRECTOR TO CARRY OUT THE DIRECTOR'S DUTIES UNDER THIS CHAPTER.

(C) ANY DENTAL SERVICE CORPORATION FAILING OR REFUSING TO SUBMIT ANY OF THE DOCUMENTS REQUIRED UNDER THIS SECTION SHALL BE LIABLE FOR A PENALTY IN AN AMOUNT NOT LESS THAN \$100 AND NOT MORE THAN \$500 FOR EACH DAY OF DELINQUENCY. PENALTIES COLLECTED PURSUANT TO THIS SECTION SHALL BE DEPOSITED INTO THE COMPLIANCE RESOLUTION FUND.

#### 448D-5A PROTECTION AGAINST INSOLVENCY.

(A) NET WORTH REQUIREMENTS ARE AS FOLLOWS:

(1) BEFORE ISSUING ANY CERTIFICATE OF AUTHORITY, THE DIRECTOR SHALL REQUIRE THAT THE DENTAL SERVICE CORPORATION HAS AN INITIAL NET WORTH OF \$2,000,000 AND SHALL THEREAFTER MAINTAIN THE MINIMUM NET WORTH REQUIRED UNDER PARAGRAPH (2);

(2) EXCEPT AS PROVIDED IN PARAGRAPHS (3) AND (4), EVERY DENTAL SERVICE CORPORATION SHALL MAINTAIN A MINIMUM NET WORTH EQUAL TO THE GREATER OF:

(A) \$2,000,000;

(B) TWO PER CENT OF ANNUAL PREMIUM REVENUES AS REPORTED ON THE MOST RECENT ANNUAL FINANCIAL STATEMENT FILED WITH THE DIRECTOR ON THE FIRST \$150,000,000 OF PREMIUM REVENUES AND ONE PER CENT OF ANNUAL PREMIUM REVENUES ON THE PREMIUM REVENUES IN EXCESS OF \$150,000,000;

(C) AN AMOUNT EQUAL TO THE SUM OF THREE MONTHS

UNCOVERED DENTAL CARE EXPENDITURES AS REPORTED ON THE MOST RECENT FINANCIAL STATEMENT FILED WITH THE DIRECTOR; OR

(D) AN AMOUNT EQUAL TO EIGHT PER CENT OF ANNUAL DENTAL CARE EXPENDITURES EXCEPT THOSE PAID ON A CAPITATED BASIS AS REPORTED ON THE MOST RECENT FINANCIAL STATEMENT FILED WITH THE DIRECTOR;

(3) THE MINIMUM NET WORTH REQUIREMENT SET FORTH IN PARAGRAPH

(2) (A) SHALL BE PHASED IN AS FOLLOWS:

(A) SEVENTY-FIVE PER CENT OF THE REQUIRED AMOUNT BY JANUARY 1, 2016; AND

(B) ONE HUNDRED PER CENT OF THE REQUIRED AMOUNT BY DECEMBER 31, 2017; AND

(4) THE FOLLOWING SHALL APPLY IN DETERMINING COMPLIANCE WITH THE REQUIREMENTS OF THIS SUBSECTION:

(A) IN DETERMINING NET WORTH, NO DEBT SHALL BE CONSIDERED FULLY SUBORDINATED UNLESS THE SUBORDINATION CLAUSE IS IN A FORM ACCEPTABLE TO THE DIRECTOR. ANY INTEREST OBLIGATION RELATING TO THE REPAYMENT OF ANY SUBORDINATED DEBT SHALL BE SIMILARLY SUBORDINATED;

(B) THE INTEREST EXPENSES RELATING TO THE REPAYMENT OF ANY FULLY SUBORDINATED DEBT SHALL BE CONSIDERED COVERED EXPENSES; AND

(C) ANY DEBT INCURRED BY A NOTE MEETING THE REQUIREMENTS OF THIS SECTION, AND OTHERWISE ACCEPTABLE TO THE DIRECTOR, SHALL NOT BE CONSIDERED A LIABILITY AND SHALL BE RECORDED AS EQUITY.

(B) DEPOSIT REQUIREMENTS ARE AS FOLLOWS:

(1) UNLESS OTHERWISE PROVIDED BELOW, EACH DENTAL SERVICE CORPORATION SHALL DEPOSIT WITH THE DIRECTOR OR, AT THE DISCRETION OF THE DIRECTOR, WITH ANY ORGANIZATION OR TRUSTEE ACCEPTABLE TO THE DIRECTOR THROUGH WHICH A CUSTODIAL OR CONTROLLED ACCOUNT IS UTILIZED, CASH, SECURITIES, OR ANY COMBINATION OF THESE OR OTHER MEASURES THAT ARE ACCEPTABLE TO THE DIRECTOR WHICH AT ALL TIMES SHALL HAVE A VALUE OF NOT LESS THAN \$300,000;

(2) A DENTAL SERVICE CORPORATION THAT IS IN OPERATION ON JULY 1, 2013, SHALL MAKE A DEPOSIT EQUAL TO \$150,000. WITHIN ONE YEAR AFTER JANUARY 1, 2014, A DENTAL SERVICE CORPORATION THAT IS IN OPERATION ON JANUARY 1, 2014, SHALL MAKE AN ADDITIONAL DEPOSIT OF \$150,000 FOR A TOTAL OF \$300,000;

(3) DEPOSITS SHALL BE AN ASSET OF THE DENTAL SERVICE CORPORATION IN THE DETERMINATION OF NET WORTH;

(4) ALL INCOME FROM DEPOSITS SHALL BE AN ASSET OF THE DENTAL

SERVICE CORPORATION. A DENTAL SERVICE CORPORATION THAT HAS MADE A SECURITIES DEPOSIT MAY WITHDRAW THAT DEPOSIT OR ANY PART THEREOF AFTER MAKING A SUBSTITUTE DEPOSIT OF CASH, SECURITIES, OR ANY COMBINATION OF THESE OR OTHER MEASURES OF EQUAL AMOUNT AND VALUE. ANY SECURITIES SHALL BE APPROVED BY THE DIRECTOR BEFORE BEING DEPOSITED OR SUBSTITUTED;

(5) THE DEPOSIT SHALL BE USED TO PROTECT THE INTERESTS OF THE DENTAL SERVICE CORPORATION'S ENROLLEES AND TO ASSURE CONTINUATION OF DENTAL CARE SERVICES TO ENROLLEES OF A DENTAL SERVICE CORPORATION WHICH IS IN REHABILITATION OR CONSERVATION. THE DIRECTOR MAY USE THE DEPOSIT FOR ADMINISTRATIVE COSTS DIRECTLY ATTRIBUTABLE TO A RECEIVERSHIP OR LIQUIDATION. IF THE DENTAL SERVICE CORPORATION IS PLACED IN RECEIVERSHIP OR LIQUIDATION, THE DEPOSIT SHALL BE AN ASSET SUBJECT TO THE PROVISIONS OF ARTICLE 15 OF CHAPTER 431; AND

(6) THE DIRECTOR MAY REDUCE OR ELIMINATE THE DEPOSIT REQUIREMENT IF THE DENTAL SERVICE CORPORATION DEPOSITS WITH THE DIRECTOR OF FINANCE OF THIS STATE, OR THE DIRECTOR, OR OTHER OFFICIAL BODY OF THE STATE OR JURISDICTION OF DOMICILE OF SUCH DENTAL SERVICE CORPORATION, FOR THE PROTECTION OF ALL SUBSCRIBERS AND ENROLLEES, WHEREVER LOCATED, CASH, ACCEPTABLE SECURITIES, OR SURETY, AND DELIVERS TO THE DIRECTOR A CERTIFICATE TO SUCH EFFECT, DULY AUTHENTICATED BY THE APPROPRIATE STATE OFFICIAL HOLDING THE DEPOSIT.

(C) EVERY DENTAL SERVICE CORPORATION, WHEN DETERMINING LIABILITIES, SHALL INCLUDE AN AMOUNT ESTIMATED IN THE AGGREGATE TO PROVIDE FOR ANY UNEARNED PREMIUM AND FOR THE PAYMENT OF ALL CLAIMS FOR DENTAL CARE EXPENDITURES WHICH HAVE BEEN INCURRED, WHETHER REPORTED OR UNREPORTED, WHICH ARE UNPAID AND FOR WHICH THE ORGANIZATION IS OR MAY BE LIABLE, AND TO PROVIDE FOR THE EXPENSE OF ADJUSTMENT OR SETTLEMENT OF CLAIMS. THESE LIABILITIES SHALL BE COMPUTED IN ACCORDANCE WITH RULES ADOPTED BY THE DIRECTOR UPON REASONABLE CONSIDERATION OF THE ASCERTAINED EXPERIENCE AND CHARACTER OF THE DENTAL SERVICE CORPORATION.

(D) EVERY CONTRACT BETWEEN A DENTAL SERVICE CORPORATION AND A PARTICIPATING PROVIDER SHALL BE IN WRITING AND SHALL SET FORTH THAT IN THE EVENT THE DENTAL SERVICE CORPORATION FAILS TO PAY FOR DENTAL CARE SERVICES AS SET FORTH IN THE CONTRACT, THE SUBSCRIBER OR ENROLLEE SHALL NOT BE LIABLE TO THE PROVIDER FOR ANY SUMS OWED BY THE DENTAL SERVICE CORPORATION. IN THE EVENT THAT A CONTRACT WITH A PARTICIPATING PROVIDER HAS NOT BEEN REDUCED TO WRITING AS REQUIRED BY THIS SUBSECTION OR THAT A CONTRACT FAILS TO CONTAIN THE REQUIRED PROHIBITION, THE PARTICIPATING PROVIDER SHALL NOT COLLECT OR ATTEMPT TO COLLECT FROM THE SUBSCRIBER OR ENROLLEE SUMS OWED BY THE DENTAL SERVICE CORPORATION. NO

PARTICIPATING PROVIDER, OR AGENT, TRUSTEE, OR ASSIGNEE THEREOF, MAY MAINTAIN ANY ACTION AT LAW AGAINST A SUBSCRIBER OR ENROLLEE TO COLLECT SUMS OWED BY THE DENTAL SERVICE CORPORATION.

(E) THE DIRECTOR SHALL REQUIRE THAT EACH DENTAL SERVICE CORPORATION HAVE A PLAN FOR HANDLING INSOLVENCY WHICH ALLOWS FOR CONTINUATION OF BENEFITS FOR THE DURATION OF THE CONTRACT PERIOD FOR WHICH PREMIUMS HAVE BEEN PAID. IN CONSIDERING SUCH A PLAN, THE DIRECTOR MAY REQUIRE:

(1) INSURANCE TO COVER THE EXPENSES TO BE PAID FOR CONTINUED BENEFITS AFTER AN INSOLVENCY;

(2) PROVISIONS IN PARTICIPATING PROVIDER CONTRACTS THAT OBLIGATE THE PROVIDER TO PROVIDE DENTAL CARE SERVICES FOR THE DURATION OF THE PERIOD AFTER THE DENTAL SERVICE CORPORATION'S INSOLVENCY FOR WHICH PREMIUM PAYMENT HAS BEEN MADE;

(3) INSOLVENCY RESERVES;

(4) ACCEPTABLE LETTERS OF CREDIT; OR

(5) ANY OTHER ARRANGEMENTS ACCEPTABLE TO THE DIRECTOR TO ASSURE THAT BENEFITS ARE CONTINUED AS SPECIFIED ABOVE.

(F) AN AGREEMENT TO PROVIDE DENTAL CARE SERVICES BETWEEN A PARTICIPATING PROVIDER AND A DENTAL SERVICE CORPORATION SHALL REQUIRE THAT A PARTICIPATING PROVIDER SHALL GIVE THE DENTAL SERVICE CORPORATION AT LEAST SIXTY DAYS' ADVANCE NOTICE IN THE EVENT OF TERMINATION.

(G) EACH DENTAL SERVICE CORPORATION SHALL PREPARE FOR REVIEW BY THE DIRECTOR ON OR BEFORE THE FORTY-FIFTH DAY OF EACH QUARTER, A COPY OF ITS QUARTERLY NET SOLVENCY REPORT VERIFIED BY AT LEAST TWO PRINCIPAL OFFICERS. THE DIRECTOR MAY PRESCRIBE THE FORMS ON WHICH THE REPORTS ARE TO BE PREPARED. EVERY DENTAL SERVICE CORPORATION SHALL MAINTAIN A COPY OF ITS CURRENT NET SOLVENCY REPORT ON THE PREMISES OF ITS PRIMARY PLACE OF BUSINESS. THE DIRECTOR MAY ORDER AN EXAMINATION, SUBJECT TO ARTICLE 2 OF CHAPTER 431, TO DETERMINE WHETHER A DENTAL SERVICE CORPORATION IS IN COMPLIANCE WITH THIS SECTION.

(H) ANY DENTAL SERVICE CORPORATION THAT FAILS OR REFUSES TO PREPARE OR PRODUCE FOR REVIEW THE QUARTERLY NET SOLVENCY REPORT OR ANY OF THE DOCUMENTS AS REQUIRED BY THIS SECTION SHALL BE LIABLE FOR A PENALTY PURSUANT TO SECTION 4©.

448d-5B UNCOVERED EXPENDITURES INSOLVENCY DEPOSIT.

(A) IF, AT ANY TIME, UNCOVERED EXPENDITURES EXCEED TEN PER CENT OF TOTAL DENTAL CARE EXPENDITURES, A DENTAL SERVICE



CORPORATION SHALL PLACE WITH THE DIRECTOR OR WITH ANY ORGANIZATION OR TRUSTEE ACCEPTABLE TO THE DIRECTOR THROUGH WHICH A CUSTODIAL OR CONTROLLED ACCOUNT IS MAINTAINED, AN UNCOVERED EXPENDITURES INSOLVENCY DEPOSIT CONSISTING OF CASH OR SECURITIES THAT ARE ACCEPTABLE TO THE DIRECTOR. SUCH DEPOSIT SHALL HAVE, AT ALL TIMES, A FAIR MARKET VALUE IN AN AMOUNT OF ONE-HUNDRED-TWENTY PER CENT OF THE DENTAL SERVICE CORPORATION'S OUTSTANDING LIABILITY FOR UNCOVERED EXPENDITURES FOR ENROLLEES IN THIS STATE, INCLUDING INCURRED BUT NOT REPORTED CLAIMS, AND SHALL BE CALCULATED AS OF THE FIRST DAY OF THE MONTH AND MAINTAINED FOR THE REMAINDER OF THE MONTH. IF A DENTAL SERVICE CORPORATION IS NOT OTHERWISE REQUIRED TO FILE A QUARTERLY REPORT, IT SHALL FILE A REPORT WITHIN FORTY-FIVE DAYS OF THE END OF THE CALENDAR QUARTER WITH INFORMATION SUFFICIENT TO DEMONSTRATE COMPLIANCE WITH THIS SECTION.

(B) THE DEPOSIT REQUIRED UNDER THIS SECTION IS IN ADDITION TO THE DEPOSIT REQUIRED UNDER SECTION 6 AND IS AN ASSET OF THE DENTAL SERVICE CORPORATION IN THE DETERMINATION OF NET WORTH. ALL INCOME FROM THE DEPOSITS OR TRUST ACCOUNTS SHALL BE ASSETS OF THE DENTAL SERVICE CORPORATION AND MAY BE WITHDRAWN FROM THE DEPOSIT OR TRUST ACCOUNT QUARTERLY WITH THE APPROVAL OF THE DIRECTOR.

(C) A DENTAL SERVICE CORPORATION THAT HAS MADE A DEPOSIT MAY WITHDRAW THAT DEPOSIT OR ANY PART OF THE DEPOSIT IF:

- (1) A SUBSTITUTE DEPOSIT OF CASH OR SECURITIES OF EQUAL AMOUNT AND VALUE IS MADE;
- (2) THE FAIR MARKET VALUE EXCEEDS THE AMOUNT OF THE REQUIRED DEPOSIT; OR
- (3) THE REQUIRED DEPOSIT UNDER SUBSECTION (A) IS REDUCED OR ELIMINATED.

DEPOSITS, SUBSTITUTIONS, OR WITHDRAWALS MAY BE MADE ONLY WITH THE PRIOR WRITTEN APPROVAL OF THE DIRECTOR.

(D) THE DEPOSIT REQUIRED UNDER THIS SECTION IS HELD IN TRUST AND MAY BE USED ONLY AS PROVIDED IN THIS SECTION. THE DIRECTOR MAY USE THE DEPOSIT OF AN INSOLVENT DENTAL SERVICE CORPORATION FOR ADMINISTRATIVE COSTS ASSOCIATED WITH ADMINISTERING THE DEPOSIT AND PAYMENT OF CLAIMS OF ENROLLEES OF THIS STATE FOR UNCOVERED EXPENDITURES IN THIS STATE. CLAIMS FOR UNCOVERED EXPENDITURES SHALL BE PAID ON A PRO RATA BASIS BASED ON ASSETS AVAILABLE TO PAY SUCH ULTIMATE LIABILITY FOR INCURRED EXPENDITURES. PARTIAL DISTRIBUTION MAY BE MADE PENDING FINAL DISTRIBUTION. ANY AMOUNT OF THE DEPOSIT REMAINING SHALL BE PAID INTO THE LIQUIDATION OR RECEIVERSHIP OF THE DENTAL SERVICE CORPORATION.

(E) THE DIRECTOR MAY PRESCRIBE THE TIME, MANNER, AND FORM FOR FILING CLAIMS UNDER SUBSECTION (D).

(F) THE DIRECTOR MAY REQUIRE DENTAL SERVICE CORPORATIONS TO FILE ANNUAL, QUARTERLY, OR MORE FREQUENT REPORTS AS THE DIRECTOR DEEMS NECESSARY TO DEMONSTRATE COMPLIANCE WITH THIS SECTION. THE DIRECTOR MAY REQUIRE THAT THE REPORTS INCLUDE LIABILITY FOR UNCOVERED EXPENDITURES AS WELL AS AN AUDIT OPINION.

448D-5C RESERVE CREDIT FOR REINSURANCE.

ANY DENTAL SERVICE CORPORATION THAT TAKES CREDIT FOR RESERVES ON RISKS CEDED TO A REINSURER SHALL BE SUBJECT TO PROVISIONS OF ARTICLE 4A OF CHAPTER 431.

448D-5D REPLACEMENT COVERAGE.

(A) FOR PURPOSES OF THIS CHAPTER, "DISCONTINUANCE" MEANS THE TERMINATION OF THE CONTRACT BETWEEN THE GROUP CONTRACT HOLDER AND A DENTAL SERVICE CORPORATION DUE TO THE INSOLVENCY OF THE DENTAL SERVICE CORPORATION, AND DOES NOT REFER TO THE TERMINATION OF ANY AGREEMENT BETWEEN ANY INDIVIDUAL SUBSCRIBER AND THE DENTAL SERVICE CORPORATION.

(B) ANY CARRIER PROVIDING REPLACEMENT COVERAGE WITH RESPECT TO GROUP DENTAL BENEFITS WITHIN A PERIOD OF SIXTY DAYS FROM THE DATE OF DISCONTINUANCE OF A PRIOR DENTAL SERVICE CORPORATION CONTRACT OR POLICY PROVIDING SUCH DENTAL BENEFITS SHALL IMMEDIATELY COVER ALL ENROLLEES WHO WERE VALIDLY COVERED UNDER THE PREVIOUS DENTAL SERVICE CORPORATION CONTRACT OR POLICY AT THE DATE OF DISCONTINUANCE AND WHO WOULD OTHERWISE BE ELIGIBLE FOR COVERAGE UNDER THE SUCCEEDING CARRIER'S CONTRACT, REGARDLESS OF ANY PROVISIONS OF THE CONTRACT RELATING TO ACTIVE EMPLOYMENT.

(C) EXCEPT TO THE EXTENT BENEFITS FOR THE CONDITION WOULD HAVE BEEN REDUCED OR EXCLUDED UNDER THE PRIOR CARRIER'S CONTRACT OR POLICY, NO PROVISION IN A SUCCEEDING CARRIER'S CONTRACT OF REPLACEMENT COVERAGE WHICH WOULD OPERATE TO REDUCE OR EXCLUDE BENEFITS ON THE BASIS THAT THE CONDITION GIVING RISE TO BENEFITS PREEXISTED THE EFFECTIVE DATE OF THE SUCCEEDING CARRIER'S CONTRACT SHALL BE APPLIED WITH RESPECT TO THOSE ENROLLEES VALIDLY COVERED UNDER THE PRIOR CARRIER'S CONTRACT OR POLICY ON THE DATE OF DISCONTINUANCE.

448D-6 INFORMATION TO SUBSCRIBERS.

(A) THE DENTAL SERVICE CORPORATION SHALL PROVIDE TO ITS SUBSCRIBERS A LIST OF PROVIDERS AND PARTICIPATING PROVIDERS, UPON ENROLLMENT AND REENROLLMENT.

(B) EVERY DENTAL SERVICE CORPORATION SHALL PROVIDE TO ITS SUBSCRIBERS NOTICE OF ANY MATERIAL CHANGE IN THE OPERATION OF THE ORGANIZATION THAT WILL AFFECT THEM DIRECTLY WITHIN

THIRTY DAYS OF THE MATERIAL CHANGE.

(C) THE DENTAL SERVICE CORPORATION SHALL PROVIDE TO SUBSCRIBERS INFORMATION ON HOW SERVICES MAY BE OBTAINED, WHERE ADDITIONAL INFORMATION ON ACCESS TO SERVICES MAY BE OBTAINED, A DESCRIPTION OF THE INTERNAL GRIEVANCE PROCEDURES, AND A TELEPHONE NUMBER FOR A SUBSCRIBER TO CONTACT THE DENTAL SERVICE CORPORATION AT NO COST TO THE SUBSCRIBER.

(D) FOR THE PURPOSE OF THIS SECTION, "MATERIAL CHANGE" MEANS ANY MAJOR CHANGE IN PROVIDER OR PARTICIPATING PROVIDER AGREEMENTS.

448D-7 SUMMARY ORDERS AND SUPERVISION.

(A) WHENEVER THE DIRECTOR DETERMINES THAT THE FINANCIAL CONDITION OF ANY DENTAL SERVICE CORPORATION IS SUCH THAT ITS CONTINUED OPERATION MIGHT BE HAZARDOUS TO ITS ENROLLEES, CREDITORS, OR THE GENERAL PUBLIC, OR THAT IT HAS VIOLATED ANY PROVISION OF THIS CHAPTER, THE DIRECTOR, AFTER NOTICE AND HEARING, MAY ORDER THE DENTAL SERVICE CORPORATION TO TAKE SUCH ACTION AS MAY BE REASONABLY NECESSARY TO RECTIFY SUCH CONDITION OR VIOLATION, INCLUDING BUT NOT LIMITED TO ONE OR MORE OF THE FOLLOWING:

- (1) REDUCING THE TOTAL AMOUNT OF PRESENT AND POTENTIAL LIABILITY FOR BENEFITS BY REINSURANCE OR OTHER METHOD ACCEPTABLE TO THE DIRECTOR;
- (2) REDUCING THE VOLUME OF NEW BUSINESS BEING ACCEPTED;
- (3) REDUCING EXPENSES BY SPECIFIED METHODS;
- (4) SUSPENDING OR LIMITING THE WRITING OF NEW BUSINESS FOR A PERIOD OF TIME;
- (5) INCREASING THE DENTAL SERVICE CORPORATION'S CAPITAL AND SURPLUS BY CONTRIBUTION; OR
- (6) TAKING ANY OTHER STEPS AS THE DIRECTOR MAY DEEM APPROPRIATE UNDER THE CIRCUMSTANCES.

(B) FOR PURPOSES OF THIS SECTION, THE VIOLATION BY A DENTAL SERVICE CORPORATION OF ANY LAW OF THIS STATE TO WHICH THE DENTAL SERVICE CORPORATION IS SUBJECT SHALL BE DEEMED A VIOLATION OF THIS CHAPTER.

(C) THE DIRECTOR IS AUTHORIZED TO SET UNIFORM STANDARDS AND CRITERIA FOR EARLY WARNING THAT THE CONTINUED OPERATION OF ANY DENTAL SERVICE CORPORATION MIGHT BE HAZARDOUS TO ITS ENROLLEES, CREDITORS, OR THE GENERAL PUBLIC, AND TO SET STANDARDS FOR EVALUATING THE FINANCIAL CONDITION OF ANY DENTAL SERVICE CORPORATION, WHICH STANDARDS SHALL BE CONSISTENT WITH THE PURPOSES EXPRESSED IN SUBSECTION (A).

(D) THE REMEDIES AND MEASURES AVAILABLE TO THE DIRECTOR UNDER THIS SECTION SHALL BE IN ADDITION TO, AND NOT IN LIEU OF, THE REMEDIES AND MEASURES AVAILABLE TO THE DIRECTOR UNDER THE PROVISIONS OF ARTICLE 15 OF CHAPTER 431.

448D-8 FEDERAL LAW COMPLIANCE

ALL DENTAL SERVICE CORPORATIONS SHALL COMPLY WITH APPLICABLE FEDERAL LAW. THE DIRECTOR SHALL ENFORCE THE CONSUMER PROTECTIONS AND MARKET REFORMS RELATING TO INSURANCE AS SET FORTH IN THE FEDERAL PATIENT PROTECTION AND AFFORDABLE CARE ACT, PUBLIC LAW 111-148.

448D-9 DISCLOSURE OF DENTAL CARE COVERAGE AND BENEFITS.

(A) IN ORDER TO ENSURE THAT ALL INDIVIDUALS UNDERSTAND THEIR DENTAL CARE OPTIONS AND ARE ABLE TO MAKE INFORMED DECISIONS, ALL DENTAL SERVICE CORPORATIONS SHALL PROVIDE CURRENT AND PROSPECTIVE SUBSCRIBERS WITH WRITTEN DISCLOSURE OF COVERAGES AND BENEFITS, INCLUDING INFORMATION ON COVERAGE PRINCIPLES AND ANY EXCLUSIONS OR RESTRICTIONS ON COVERAGE.

(B) THE INFORMATION PROVIDED SHALL BE CURRENT, UNDERSTANDABLE, AND AVAILABLE PRIOR TO ENROLLMENT, AND UPON REQUEST AFTER ENROLLMENT. A POLICY OR CONTRACT PROVIDED TO A SUBSCRIBER WHICH DESCRIBES COVERAGES AND BENEFITS SHALL BE IN CONFORMANCE WITH PART I OF ARTICLE 10 OF CHAPTER 431.

448D-10 FEDERALLY FUNDED PROGRAMS; EXEMPTION.

REQUIREMENTS PROVIDED IN THIS CHAPTER RELATING TO MANDATED COVERAGES OR ESSENTIAL HEALTH BENEFITS SHALL NOT BE APPLICABLE TO ANY DENTAL SERVICE CORPORATION OFFERING DENTAL INSURANCE UNDER A FEDERALLY FUNDED PROGRAM UNDER THE SOCIAL SECURITY ACT, AS AMENDED; PROVIDED THAT THIS EXEMPTION SHALL APPLY ONLY TO THAT PART OF THE DENTAL SERVICE CORPORATION'S BUSINESS UNDER THE FEDERALLY FUNDED PROGRAM.

448D-11 ADMINISTRATIVE FINES AND ENFORCEMENT.

(A) THE DIRECTOR, IN ADDITION TO OR IN LIEU OF, SUSPENSION OR REVOCATION OF A CERTIFICATE OF AUTHORITY PURSUANT TO SECTION 13, THE DIRECTOR MAY LEVY AN ADMINISTRATIVE FINE UPON THE DENTAL SERVICE CORPORATION IN AN AMOUNT NOT LESS THAN \$500 AND NOT MORE THAN \$50,000. THE DENTAL SERVICE CORPORATION MAY REQUEST, IN WRITING, A HEARING PURSUANT TO SECTION 13. THE ORDER LEVYING THE FINE SHALL SPECIFY THE PERIOD WITHIN WHICH THE FINE SHALL BE FULLY PAID, WHICH SHALL NOT BE LESS THAN THIRTY NOR MORE THAN FORTY-FIVE DAYS

FROM THE DATE OF THE ORDER. UPON FAILURE TO PAY THE FINE WHEN DUE, THE DIRECTOR SHALL REVOKE THE INSURER'S CERTIFICATE OF AUTHORITY IF NOT ALREADY REVOKED, AND THE FINE SHALL BE RECOVERED IN A CIVIL ACTION BROUGHT ON BEHALF OF THE DIRECTOR BY THE ATTORNEY GENERAL. ANY FINE SO COLLECTED SHALL BE REMITTED BY THE DIRECTOR TO THE DIRECTOR OF FINANCE AND SHALL BE PLACED TO THE CREDIT OF THE COMPLIANCE RESOLUTION FUND.

(B) IF THE DIRECTOR, FOR ANY REASON, HAS CAUSE TO BELIEVE THAT ANY VIOLATION OF THIS CHAPTER HAS OCCURRED OR IS THREATENED, THE DIRECTOR MAY GIVE NOTICE TO THE DENTAL SERVICE CORPORATION AND TO THE REPRESENTATIVES, OR OTHER PERSONS WHO APPEAR TO BE INVOLVED IN SUCH SUSPECTED VIOLATION, TO ARRANGE A CONFERENCE WITH THE ALLEGED VIOLATORS OR THEIR AUTHORIZED REPRESENTATIVES FOR THE PURPOSE OF ATTEMPTING TO ASCERTAIN THE FACTS RELATING TO ANY SUSPECTED VIOLATION AND, IN THE EVENT IT APPEARS THAT ANY VIOLATION HAS OCCURRED OR IS THREATENED, TO ARRIVE AT AN ADEQUATE AND EFFECTIVE MEANS OF CORRECTING OR PREVENTING ANY VIOLATION. PROCEEDINGS UNDER THIS SUBSECTION SHALL NOT BE GOVERNED BY ANY FORMAL PROCEDURAL REQUIREMENTS, AND MAY BE CONDUCTED IN SUCH MANNER AS THE DIRECTOR MAY DEEM APPROPRIATE UNDER THE CIRCUMSTANCES. HOWEVER, UNLESS CONSENTED TO BY THE DENTAL SERVICE CORPORATION, NO ORDER MAY RESULT FROM A CONFERENCE UNTIL THE REQUIREMENTS OF THIS SECTION ARE SATISFIED.

(C) THE DIRECTOR MAY ISSUE AN ORDER DIRECTING A DENTAL SERVICE CORPORATION OR A REPRESENTATIVE OF A DENTAL SERVICE ORGANIZATION TO CEASE AND DESIST FROM ENGAGING IN ANY ACT OR PRACTICE IN VIOLATION OF THE PROVISIONS OF THIS CHAPTER. ANY PERSON AGGRIEVED BY AN ORDER OF THE DIRECTOR UNDER THIS SECTION MAY OBTAIN JUDICIAL REVIEW OF THE ORDER IN THE MANNER PROVIDED FOR BY CHAPTER 91.

(D) IN THE CASE OF ANY VIOLATION OF THE PROVISIONS OF THIS CHAPTER, IF THE DIRECTOR ELECTS NOT TO ISSUE A CEASE AND DESIST ORDER, OR IN THE EVENT OF NONCOMPLIANCE WITH A CEASE AND DESIST ORDER ISSUED PURSUANT TO SUBSECTION (C), THE DIRECTOR MAY INSTITUTE A PROCEEDING TO OBTAIN INJUNCTIVE OR OTHER APPROPRIATE RELIEF IN ANY COURT OF COMPETENT JURISDICTION.

#### 448D-12 COORDINATION OF BENEFITS.

DENTAL SERVICE CORPORATIONS ARE REQUIRED TO ADOPT PROVISIONS FOR COORDINATION OF BENEFITS TO AVOID OVER INSURANCE AND TO PROVIDE FOR THE ORDERLY PAYMENT OF CLAIMS WHEN A PERSON IS COVERED BY TWO OR MORE GROUP HEALTH INSURANCE OR HEALTH CARE

PLANS.

448D-13 FEES TO PROVIDERS OF DENTAL SERVICES.

(A) NO DENTAL SERVICE ORGANIZATION MAY REQUIRE, DIRECTLY OR INDIRECTLY, A DENTIST WHO IS A PARTICIPATING PROVIDER TO PROVIDE SERVICES TO AN ENROLLED PARTICIPANT AT A FEE SET BY, OR AT A FEE SUBJECT TO THE APPROVAL OF, THE DENTAL SERVICE ORGANIZATION UNLESS THE DENTAL SERVICES ARE COVERED SERVICES.

(B) A DENTAL SERVICE ORGANIZATION SHALL NOT INCLUDE, IN ANY DENTAL SERVICE PLAN, CONTRACT, OR AGREEMENT WITH A DENTIST TO PROVIDE COVERED SERVICES, ANY PROVISION THAT SETS OR RECOMMENDS FEES FOR DENTAL SERVICES THAT ARE NOT COVERED SERVICES.

(C) A VIOLATION OF THIS SECTION SHALL BE A VIOLATION OF SECTION 480-2.