

JAN 24 2013

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# A BILL FOR AN ACT

RELATING TO THE HAWAII HEALTH SYSTEMS CORPORATION.

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

1           SECTION 1. The legislature finds that the Hawaii health  
2 systems corporation is the fourth largest public hospital system  
3 in the nation and operates public health care facilities that  
4 provide essential safety-net hospital and long-term care  
5 services throughout the State. The legislature further finds  
6 that improving the efficiency and quality of health care  
7 services in all communities of the State has become increasingly  
8 important. Therefore the continued financial challenges faced  
9 by the Hawaii health systems corporation and the State requires  
10 the state government to take affirmative measures to improve the  
11 quality, efficiency, and availability of health care services in  
12 Hawaii.

13           The legislature additionally finds that prominent national  
14 studies have demonstrated that many public hospital systems have  
15 struggled financially for a variety of reasons, including  
16 providing a disproportionate level of uncompensated and under-  
17 compensated care compared to private hospital systems, and the  
18 inherent constraints and inefficiencies that result from



1 operating as a governmental agency. As a result, an increasing  
2 number of public hospitals have converted to non-public status.

3 While the legislature recognizes that the system of public  
4 hospitals in the State will continue to require state subsidies  
5 and other support to assist public hospitals after their  
6 conversion to non-public status, the legislature finds that  
7 allowing the operations of one or more regional systems of the  
8 corporation, or one or more of its individual health facilities,  
9 to transition to non-public status is likely to improve the  
10 quality of health care services and operational efficiencies of  
11 health facilities in the communities they serve and reduce the  
12 level of state support that will be required over time, all for  
13 the improvement of the health and welfare of the people of the  
14 State of Hawaii.

15 The legislature also finds that it is essential that this  
16 transition to non-public operation be an option available for  
17 consideration by the various regional system boards and the  
18 Hawaii health systems corporation and should be carefully  
19 evaluated by the community representatives that comprise the  
20 regional system boards.

21 The purpose of this Act is to further advance the State's  
22 commitment to providing quality health care by allowing the



1 operations of the regional systems of the Hawaii health systems  
2 corporation and their facilities to transition to non-public  
3 status.

4 SECTION 2. Section 323F-1, Hawaii Revised Statutes, is  
5 amended as follows:

6 1. By adding three new definitions to be appropriately  
7 inserted and to read:

8 "Health facility assets" means all property or rights in  
9 property and assets, real, personal, and mixed, tangible or  
10 intangible, owned, leased, operated, or otherwise used by or  
11 accruing to the corporation or a regional system with respect to  
12 a health facility or system.

13 "New entity" means an entity formed in accordance with  
14 section 323F-7.6(b).

15 "Private entity" means a non-public entity to which health  
16 facility assets are sold, leased, or otherwise transferred in  
17 accordance with section 323F-7.6."

18 2. By amending the definition of "health facility" to  
19 read:

20 "Health facility" means any one of the facilities that  
21 [~~constitute the division of community hospitals.~~] is owned or  
22 operated under the direction of a regional system board or the



1 corporation, or both, or is transitioned to non-public status  
2 pursuant to section 323F-7.6."

3 SECTION 3. Section 323F-7.6, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "[+]§323F-7.6[+] Transition of [~~Hawaii health systems~~]  
6 regional system or systems or health facility or facilities to  
7 [~~a new entity.~~] non-public status. (a) Notwithstanding any  
8 other law to the contrary, including but not limited to section  
9 27-1 and chapter 171, [~~any of the~~] each regional system board  
10 is, and any two or more regional boards acting together are,  
11 authorized to transition their respective regional systems or  
12 [~~individual~~] one or more of the health facilities of the [~~Hawaii~~  
13 ~~health systems~~] corporation [~~is hereby authorized to transition~~  
14 ~~into~~] within their regional systems to non-public status. Any  
15 transition shall comply with this section, including the  
16 approvals required by subsection (c) and chapter 323D.

17 (b) In furtherance of any transition to non-public status,  
18 each regional system board is, and any two or more regional  
19 system boards are, authorized to form a new [legal] entity in  
20 any form recognized under the laws of the State, including but  
21 not limited to:

22 (1) A nonprofit corporation;



- 1           (2) A for-profit corporation;
- 2           (3) A municipal facility;
- 3           (4) A public benefit corporation; or
- 4           (5) Any two or more of the entities in paragraphs (1)
- 5           through (4).

6 ~~[A transition shall occur through the sale, lease, or transfer~~  
7 ~~of all or substantially all of the assets of the facility or~~  
8 ~~regional system, except for] In order to facilitate the~~

9 transition of health facilities to non-public status, the

10 regional system board for the applicable regional system or

11 health facility is authorized, alone or with other regional

12 system boards, to transfer to the governing body of the new

13 entity all of the duties, responsibilities, rights, and powers

14 of the regional system board with respect to the applicable

15 regional system or systems or health facility or facilities to

16 be transferred to the new entity, including without limitation

17 those duties and powers set forth in sections 323F-3.5 and 323F-

18 7, and is also authorized to sell, lease, or transfer the

19 regional system or systems or health facility or facilities and

20 related health facility assets to the new entity or directly to

21 a private entity; provided that real property [which] shall only



1 be transferred by lease [~~Any transition shall comply with~~  
2 ~~chapter 323D.~~] to a new entity or a private entity.

3        [~~(b)~~] (c) A transition to non-public status, including any  
4 related transfer of health facility assets to a new entity or a  
5 private entity, shall only occur upon approval of the  
6 [~~appropriate~~] regional system board or boards in whose region or  
7 regions the health facility assets are located, in the case of a  
8 regional system or individual facility transition, or upon  
9 approval of the regional system boards and the corporation in  
10 the case of the transition of the entire corporation. Any  
11 transition to non-public status shall be subject to legal review  
12 by the attorney general who shall approve the transition if  
13 satisfied that the transition conforms to all applicable laws,  
14 subject to the review of the director of the department of  
15 budget and finance who shall approve the transition if it  
16 conforms to all applicable financing procedures, and subject to  
17 the governor's approval. In addition, the transition, including  
18 any transfer of health facility assets to a new entity or a  
19 private entity, shall be subject to the following terms and  
20 conditions:

21        (1) All proceeds from the sale, lease, or transfer of  
22            health facility assets shall be used for health care



1 services in the [~~respective~~] applicable regional  
2 system or systems or health facility [~~, except that~~  
3 ~~real property shall only be transferred by lease,~~] or  
4 facilities, or to discharge liabilities of the  
5 applicable regional system or systems or health  
6 facility or facilities;

7 (2) Any and all liabilities of the corporation or a  
8 regional system or a health facility transitioning  
9 [~~into a new entity~~] to non-public status that were  
10 transferred to the [~~Hawaii health systems~~] corporation  
11 upon its creation by Act 262, Session Laws of Hawaii  
12 1996, and all liabilities of the corporation or the  
13 regional system or health facility related to  
14 collective bargaining contracts negotiated by the  
15 State, shall become the responsibility of the State;  
16 and

17 (3) During the period of transition:

18 (A) The State shall continue to fund the provision of  
19 health care services provided for by the regional  
20 system or individual health facility; and

21 (B) All applicable provisions of this chapter shall  
22 continue to apply.



1           (d) A new entity and the governing body thereof are  
2 authorized to exercise all of the duties, responsibilities,  
3 rights, and powers transferred by the regional system board or  
4 boards with respect to the applicable regional system or systems  
5 or health facility or facilities transferred to the new entity,  
6 including without limitation those duties and powers set forth  
7 in sections 323F-3.5 and 323F-7; to enter into and perform any  
8 lease or contract with a private entity for the lease and  
9 operation of the regional system or systems or health facility  
10 or facilities; and to sell, lease, or otherwise transfer all or  
11 substantially all of the health facility assets of the  
12 applicable regional system or systems or health facility or  
13 facilities.

14           (e) Upon and after the completion of the [transition]  
15 transfer of all the health facilities in a regional system to a  
16 new entity [~~the~~] or a private entity:

17           (1) The regional system board for that regional system  
18           shall terminate; provided that if not all of a  
19           regional system's health facilities are [~~transitioned~~]  
20           transferred to a new entity [~~the~~] or a private entity,  
21           the existing regional system board shall not terminate





1 but shall continue to retain jurisdiction over those  
2 health facilities remaining in the regional system[-];

3 (2) Any adjustment to be made by the new entity or a  
4 private entity to the levels of services provided by  
5 the transferred facilities or regional system shall be  
6 subject to section 323F-31 and shall be exempt from  
7 section 323D-82;

8 (3) None of the liabilities of the transferred health  
9 facilities or regional system shall become liabilities  
10 of the new entity or the private entity by operation  
11 of law or otherwise, unless otherwise negotiated  
12 between the applicable regional system board and the  
13 new entity or between the new entity and the private  
14 entity, as applicable;

15 (4) Subject to legislative appropriation of the necessary  
16 funds, the State shall continue to fund the provision  
17 of health care services by the new entity or the  
18 private entity through operating support subsidies,  
19 and provide funds for capital improvements to the  
20 applicable regional system and health facilities  
21 operated by any new entity or private entity;



- 1        (5) The new entity shall have the right to incur revenue  
2        bond debt to finance capital expenditures;
- 3        (6) No new entity, unless the new entity is a municipal  
4        facility, or private entity shall in any respect be a  
5        governmental body, agency, establishment, or  
6        instrumentality by virtue of acquiring, leasing, or  
7        operating any of the health facilities or regional  
8        systems, including by virtue of leasing any real  
9        property or acquiring any other health facility  
10       assets, and no provisions of law that are or shall be  
11       applicable to any governmental body, agency,  
12       establishment, or instrumentality are or shall be  
13       applicable to the new entity, unless the new entity is  
14       a municipal facility, or the private entity, including  
15       without limitation, chapter 84, chapter 91, chapter  
16       92, chapter 92F, and sections 323F-7(d), 323F-21,  
17       323F-22, 323F-24, and 323F-25. As a non-public  
18       entity, the private entity shall be subject to the  
19       hospital sustainability fee and shall participate in  
20       the hospital sustainability program special fund on  
21       the same basis as other private hospitals;



- 1        (7) Notwithstanding any other law to the contrary, each  
2        new entity and private entity shall be exempt from  
3        paying any state taxes on any operating support  
4        subsidies and funds for capital improvements received  
5        by either or both of them and any taxes imposed under  
6        chapters 237, 238, and 247 with respect to amounts  
7        received in connection with the transactions  
8        comprising the transition to non-public status or in  
9        connection with any other transaction between or among  
10       any two or more of the State, the corporation, the  
11       regional systems, the new entity, and the private  
12       entity;
- 13       (8) Employees of the new entity, unless the new entity is  
14       a municipal facility, and the private entity shall be  
15       exempt from chapters 76, 87A, 88, and 89, and in no  
16       event shall the employees of the new entity or the  
17       private entity be considered as employees of the  
18       State;
- 19       (9) No director, or other member of the governing body  
20       regardless of title; officer; employee; or other agent  
21       of a private entity may be a director or other member,



1           regardless of title, of the governing board of a new  
2           entity; and

3       (10) Any transaction between a new entity and a private  
4           entity, and any purchase of goods and services by or  
5           on behalf of the new entity or the private entity,  
6           shall be exempt from chapters 102, 103, 103D, and  
7           103F."

8           SECTION 4. Section 323F-31, Hawaii Revised Statutes, is  
9 amended to read as follows:

10           "**§323F-31 Maintenance of services.** (a) No planned  
11 substantial reduction or elimination of direct patient care  
12 services at any health facility shall be undertaken unless all  
13 of the following requirements are met:

14           (1) An initial determination is made by the regional chief  
15           executive officer, or by a new entity or a private  
16           entity under section 323F-7.6, as to critical and  
17           emergency services which shall not be subject to  
18           reduction or elimination pursuant to this section;

19           (2) The plan of the health facility, the new entity, or  
20           the private entity to substantially reduce or  
21           eliminate any direct patient care services at the  
22           health facility shall first be presented to the



1 regional system board, or to the new entity in the  
2 case of a plan of a private entity, for its approval;

3 (3) Subsequent to the requisite [~~regional system board~~]  
4 approval, the regional chief executive officer or the  
5 designated representative of the new entity or private  
6 entity shall present the plan to the community in  
7 which the health facility is located, at a community  
8 informational meeting, in order to obtain community  
9 input on the plan; and

10 (4) Provided that if the regional system board approves  
11 the plan, the plan as approved by the regional system  
12 board shall be submitted to the corporation board for  
13 ratification[-]; provided that no approval by the  
14 regional system board or ratification by the  
15 corporation is required if the governing body of the  
16 new entity approves a plan presented by a private  
17 entity.

18 (b) After the community informational meeting, but at  
19 least twenty days prior to the implementation of the plan  
20 approved by the regional system board[-] or by the governing  
21 body of the new entity, the regional system board or the  
22 governing body of the new entity or the private entity shall



1 give notice of implementation of the plan to the governor,  
2 senate president, and the speaker of the house of  
3 representatives.

4 (c) The decision of the regional system board, or the  
5 governing body of the new entity with respect to a plan  
6 presented by a private entity, shall be the final decision with  
7 respect to the plan. Implementation of the plan shall commence  
8 and continue, provided that no legislation is enacted that:

- 9 (1) Requires the reinstatement and continuation of the  
10 direct patient care services that are subject to  
11 reduction or elimination under the plan; and  
12 (2) Includes an appropriation of additional moneys  
13 sufficient to adequately fund the mandated  
14 reinstatement and continuation of the subject direct  
15 patient care services."

16 SECTION 5. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18 SECTION 6. This Act shall take effect upon its approval.

19

INTRODUCED BY:

~~SEN. DC. Frank J. ...~~  
J. Kelly  
Assembly H. Beck



# S.B. NO. 1306

**Report Title:**

Hawaii Health Systems Corporation; Health Care; Non-Public Status

**Description:**

Permits the regional systems of the Hawaii health systems corporation and their health facilities to transition to non-public status.

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