
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 require
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 that is
17 available for consideration by the various regional system
18 boards and the Hawaii health systems corporation and should be
19 carefully evaluated by the community representatives that
20 comprise the 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 assets and property or
9 rights in property, real, personal, and mixed, tangible or
10 intangible, that are owned, leased, operated, or otherwise used
11 by or accruing to the corporation or a regional system with
12 respect to 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 system boards acting together
11 are, authorized to transition their respective regional systems
12 or [~~individual~~] one or more of the health facilities of the
13 [~~Hawaii health systems~~] corporation [~~is hereby authorized to~~
14 ~~transition into~~] within their regional systems to non-public
15 status. Any transition shall comply with this section,
16 including the approvals required by subsection (c) and chapter
17 323D.

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



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

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

10 transition of health facilities to non-public status, the
11 regional system board for the applicable regional system or
12 health facility is authorized, alone or with other regional
13 system boards, to:

- 14 (1) Transfer to the governing body of the new entity all
15 of the duties, responsibilities, rights, and powers of
16 the regional system board with respect to the
17 applicable regional system or systems or health
18 facility or facilities to be transferred to the new
19 entity, including without limitation those duties and
20 powers set forth in sections 323F-3.5 and 323F-7; and
- 21 (2) Sell, lease, or transfer the regional system or
22 systems or health facility or facilities and related



1 health facility assets to the new entity or directly
2 to a private entity; provided that real property
3 [which] shall only be transferred by lease [~~Any~~
4 ~~transition shall comply with chapter 323D.~~] to a new
5 entity or a private entity.

6 [~~(b)~~] (c) A transition to non-public status, including any
7 related transfer of health facility assets to a new entity or a
8 private entity, retention of liabilities by the corporation or
9 the State, accrued benefits status of employees, and any change
10 in collective bargaining shall only occur upon approval [e] by:
11 an affirmative vote of both houses of the legislature, through
12 concurrent resolution; the [appropriate] regional system board;
13 and boards in whose region or regions the health facility assets
14 are located, in the case of a regional system or individual
15 facility transition, or upon approval of the regional system
16 boards and the corporation in the case of the transition of the
17 entire corporation. Any transition to non-public status shall
18 be subject to legal review by the attorney general who shall
19 approve the transition if satisfied that the transition conforms
20 to all applicable laws, subject to the review of the director of
21 the department of budget and finance who shall approve the
22 transition if it conforms to all applicable financing



1 procedures, and subject to the governor's approval. In
2 addition, the transition, including any transfer of health
3 facility assets to a new entity or a private entity, shall be
4 subject to the following terms and conditions:

- 5 (1) All proceeds from the sale, lease, or transfer of
6 health facility assets shall be used for health care
7 services in the [~~respective~~] applicable regional
8 system or systems or health facility [~~, except that~~
9 ~~real property shall only be transferred by lease,~~] or
10 facilities, or to discharge liabilities of the
11 applicable regional system or systems or health
12 facility or facilities;
- 13 (2) Any and all liabilities of the corporation or a
14 regional system or a health facility transitioning
15 [~~into a new entity~~] to non-public status that were
16 transferred to the [~~Hawaii health systems~~] corporation
17 upon its creation by Act 262, Session Laws of Hawaii
18 1996, and all liabilities of the corporation or the
19 regional system or health facility related to
20 collective bargaining contracts negotiated by the
21 State, shall become the responsibility of the State;
22 and



- 1 (3) During the period of transition:
- 2 (A) The State shall continue to fund the provision of
- 3 health care services provided for by the regional
- 4 system or individual health facility; and
- 5 (B) All applicable provisions of this chapter shall
- 6 continue to apply.
- 7 (d) A new entity and the governing body thereof may:
- 8 (1) Exercise all of the duties, responsibilities, rights,
- 9 and powers transferred by the regional system board or
- 10 boards with respect to the applicable regional system
- 11 or systems or health facility or facilities
- 12 transferred to the new entity, including without
- 13 limitation those duties and powers set forth in
- 14 sections 323F-3.5 and 323F-7;
- 15 (2) Enter into and perform any lease or contract with a
- 16 private entity for the lease and operation of the
- 17 regional system or systems or health facility or
- 18 facilities; and
- 19 (3) Sell, lease, or otherwise transfer all or
- 20 substantially all of the health facility assets of the
- 21 applicable regional system or systems or health
- 22 facility or facilities.



1 (e) Upon and after the completion of the [~~transition~~]
2 transfer of all the health facilities in a regional system to a
3 new entity[~~, the~~] or a private entity:

4 (1) The regional system board for that regional system
5 shall terminate; provided that if not all of a
6 regional system's health facilities are [~~transitioned~~]
7 transferred to a new entity[~~,~~] or a private entity,
8 the existing regional system board shall not terminate
9 but shall continue to retain jurisdiction over those
10 health facilities remaining in the regional system[~~,~~];

11 (2) Any adjustment to be made by the new entity or a
12 private entity to the levels of services provided by
13 the transferred facilities or regional system shall be
14 subject to section 323F-31 and shall be exempt from
15 section 323D-82;

16 (3) None of the liabilities of the transferred health
17 facilities or regional system shall become liabilities
18 of the new entity or the private entity by operation
19 of law or otherwise, unless otherwise negotiated
20 between the applicable regional system board and the
21 new entity or between the new entity and the private
22 entity, as applicable;



1 (4) Subject to legislative appropriation of the necessary
2 funds, the State shall:

3 (A) Continue to fund the provision of health care
4 services by the new entity or the private entity
5 through operating support subsidies; and

6 (B) Provide funds for capital improvements to the
7 applicable regional system and health facilities
8 operated by any new entity or private entity;

9 (5) No new entity, unless the new entity is a municipal
10 facility, or private entity shall in any respect be a
11 governmental body, agency, establishment, or
12 instrumentality by virtue of acquiring, leasing, or
13 operating any of the health facilities or regional
14 systems, including by virtue of leasing any real
15 property or acquiring any other health facility
16 assets. No provision of law that is or shall be
17 applicable to any governmental body, agency,
18 establishment, or instrumentality, including without
19 limitation chapters 84, 91, 92, and 92F and sections
20 323F-7(d), 323F-21, 323F-22, 323F-24, and 323F-25, is
21 or shall be applicable to the new entity, unless the
22 new entity is a municipal facility, or the private



1 entity. As a non-public entity, the private entity
2 shall be subject to the hospital sustainability fee
3 and shall participate in the hospital sustainability
4 program special fund on the same basis as other
5 private hospitals, pursuant to Act 217, Session Laws
6 of Hawaii 2012;

7 (6) Notwithstanding any other law to the contrary, each
8 new entity and private entity shall be exempt from
9 paying:

10 (A) Any state taxes on any operating support
11 subsidies and funds for capital improvements
12 received by either or both of them; and

13 (B) Any taxes imposed under chapters 237, 238, and
14 247 with respect to amounts received in
15 connection with the transactions comprising the
16 transition to non-public status or in connection
17 with any other transaction between or among any
18 two or more of the following:

19 (i) The State;

20 (ii) The corporation;

21 (iii) The regional systems;

22 (iv) The new entity; and



- 1 (v) The private entity;
- 2 (7) No director or other member of the governing body,
- 3 regardless of title, officer, employee, or other agent
- 4 of a private entity may be a director or other member,
- 5 regardless of title, of the governing board of a new
- 6 entity; and
- 7 (8) Any transaction between a new entity and a private
- 8 entity, and any purchase of goods and services by or
- 9 on behalf of the new entity or the private entity,
- 10 shall be exempt from chapters 102, 103, 103D, and
- 11 103F."

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

14 "**§323F-31 Maintenance of services.** (a) No planned
 15 substantial reduction or elimination of direct patient care
 16 services at any health facility shall be undertaken unless all
 17 of the following requirements are met:

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



- 1 (2) The plan of the health facility, the new entity, or
2 the private entity to substantially reduce or
3 eliminate any direct patient care services at the
4 health facility shall first be presented to the
5 regional system board, or to the new entity in the
6 case of a plan of a private entity, for its approval;
- 7 (3) Subsequent to the requisite [~~regional system board~~]
8 approval, the regional chief executive officer or the
9 designated representative of the new entity or private
10 entity shall present the plan to the community in
11 which the health facility is located, at a community
12 informational meeting, in order to obtain community
13 input on the plan; and
- 14 (4) Provided that if the regional system board approves
15 the plan, the plan as approved by the regional system
16 board shall be submitted to the corporation board for
17 ratification[-]; provided that no approval by the
18 regional system board or ratification by the
19 corporation is required if the governing body of the
20 new entity approves a plan presented by a private
21 entity.



1 (b) After the community informational meeting, but at
2 least twenty days prior to the implementation of the plan
3 approved by the regional system board[7] or by the governing
4 body of the new entity, the regional system board or the
5 governing body of the new entity or the private entity shall
6 give notice of implementation of the plan to the governor,
7 senate president, and the speaker of the house of
8 representatives.

9 (c) The decision of the regional system board, or the
10 governing body of the new entity with respect to a plan
11 presented by a private entity, shall be the final decision with
12 respect to the plan. Implementation of the plan shall commence
13 and continue, provided that no legislation is enacted that:

- 14 (1) Requires the reinstatement and continuation of the
15 direct patient care services that are subject to
16 reduction or elimination under the plan; and
17 (2) Includes an appropriation of additional moneys
18 sufficient to adequately fund the mandated
19 reinstatement and continuation of the subject direct
20 patient care services."

21 SECTION 5. Statutory material to be repealed is bracketed
22 and stricken. New statutory material is underscored.



1 SECTION 6. This Act shall take effect on January 1, 2050.



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. Effective 01/01/2050. (SD2)

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not legislation or evidence of legislative intent.*

