



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2015**

ON THE FOLLOWING MEASURE:

S.B. NO. 0311, RELATING TO HAWAII HEALTH SYSTEMS CORPORATION.

BEFORE THE:

SENATE COMMITTEE ON HEALTH

DATE: Wednesday, February 11, 2015 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): RUSSELL A. SUZUKI, Attorney General, or
Andrea J. Armitage, Deputy Attorney General

Chair Green and Members of the Committee:

The Department of the Attorney General provides the following comments.

This bill would create a new part in chapter 323F, Hawaii Revised Statutes (HRS), with respect to the Hawaii Health Systems Corporation (HHSC) to enable a partnering process and eventual transition of one or more of its regional systems, or one or more of its health care facilities to a private nonprofit or public benefit corporation ("healthcare management system") that has provided healthcare services in the State for at least ten years. The measure provides for a transition committee consisting of nineteen members to review and monitor proposals for healthcare management agreements to transition the governance and management of HHSC facilities to the new healthcare management system, while maintaining the workforce as state employees. Subsequently, the healthcare management system may submit a proposal to the transition committee to purchase the facilities under its management (excluding the real property), and negotiate with representatives of the employees to transition the employees from the public to the private sector. Also, the bill would require that the management agreement "[a]ssure that the selected healthcare management system . . . receive general fund support from the State sufficient to maintain equivalent hospital services in acquired regions for no more than five years after" the purchase. Once an entire regional system's facilities have been purchased through this process, the regional system will no longer be subject to chapter 323F, HRS, regarding HHSC.

We have two concerns about this bill.

A. The Allocation Conditions of Current and Future Liabilities of the Transitioned Facility Are Not Specified.

Proposed section 323F-E requires the management agreement executed by the State and the selected healthcare management systems to "[s]pecify that any and all liabilities of the corporation, regional system, or combined regional system transitioning into a new healthcare management system that were transferred to the corporation upon its creation pursuant to Act 262, Session Laws of Hawaii 1996, and all liabilities of the corporation, regional system, or combined regional system related to collective bargaining contracts negotiated by the State, shall remain the responsibility of the State[.]" Page 8, lines 14 – 20, and page 9, lines 1 – 2.

However, there is no clear corresponding provision describing what happens to the liabilities of the "corporation, regional system, or combined regional system" that arise during the pendency of the management agreement. Does the Legislature intend for the State to be liable for all acts or omissions committed by the new healthcare management system during that period? We would be happy to assist the committee to draft a provision once we know the committee's intent.

Furthermore, there is no provision describing what happens to the liabilities of the "corporation, regional system, or combined system" upon purchase by the new healthcare management system. We would recommend that the following sentence be added to the end of proposed section 323F-E, on page 12:

All future liabilities arising out of the purchased facilities shall be the responsibility of the new healthcare management system effective upon the purchase date of the facilities.

B. This Bill Cannot Mandate Future Legislatures to Appropriate Moneys to the Transitioned Facility.

Proposed section 323F-E(2) of the bill, on page 9, lines 3 – 10, purports to require the management agreement executed by the State and the selected healthcare management systems to:

Assure that the selected healthcare management system shall receive general fund support from the State sufficient to maintain equivalent hospital services in acquired regions for no more than five years after its assumption of the responsibilities of one or more regional systems or health systems facilities to deliver health care in the communities served by the systems or facilities[.]

However, this section (1) cannot bind successive Legislatures to make particular appropriations, (2) does not require the Legislature to appropriate a specific amount to the transitioned facility, and (3) acts only as an intention by the Legislature to appropriate funds in the future.

If interpreted as compulsory, section 323F-E(2), requiring the management agreement between the State and the healthcare management system to **assure** that there is "sufficient" funding in the future, would violate Article III, section 1, of the State Constitution, by attempting to control the power of a succeeding Legislature to make specific appropriations. At best, the provision could be interpreted as advisory only and, therefore, unenforceable.

With respect to proposed section 323F-E (2), we are concerned that if that provision remains and the bill is enacted, prospective healthcare management systems interested in becoming a "transitioned facility" would believe that the provision is enforceable and it would become part of their assumptions when negotiating the management agreement as well as the purchase of the facilities. This could lead to a mistaken understanding and possible litigation. We recommend that that section be reworded to provide that the management agreement shall include provisions that:

Assure that the State shall use its best efforts to selected healthcare management system shall receive provide general fund support to the selected healthcare management system from the State sufficient to maintain equivalent hospital services in acquired regions for no more than five years after its assumption of the responsibilities of one or more regional systems or health systems facilities to deliver health care in the communities served by the systems or facilities, or until the regional systems or health systems facilities are purchased by the healthcare management system.

An alternative would be to make that provision clearly contingent upon future legislative appropriations.

We respectfully request that the Committee consider our comments.

TESTIMONY BY WESLEY K. MACHIDA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE SENATE COMMITTEE ON HEALTH
ON
SENATE BILL NO. 311

February 11, 2015

RELATING TO HAWAII HEALTH SYSTEMS CORPORATION

Senate Bill No. 311 establishes: a process to enable the Hawaii Health Systems Corporation (HHSC), a regional system, or a combined regional system of two or more regional systems or a facility or service, to transition to a new healthcare management system organized under the laws of the State as a non-profit corporation or public benefit corporation registered to do business in the State; and a transition committee to assist the Governor in reviewing and monitoring the transitioning of the corporation, a regional system, or a combined regional system to a new healthcare management system.

The Department of Budget and Finance supports the general intent of transitioning HHSC into “a more economically efficient system of health care delivery.” The issues involved in facilitating HHSC sustainability are complex and multi-faceted. For this reason, we would recommend moving this bill along to enable further discussion and deliberation.

The Ige Administration will work with the applicable committees during the course of this session to attempt to develop a realistic and workable framework for moving forward to ensure that vital health care services will be provided either through a restructured HHSC or some other appropriate entity.

From: mailinglist@capitol.hawaii.gov
To: [HTHTestimony](#)
Cc: akumatakaluhec@hpsc.org
Subject: Submitted testimony for SB311 on Feb 11, 2015 09:00AM
Date: Tuesday, February 10, 2015 9:11:48 AM
Attachments: [SB311 Testimony.doc](#)

SB311

Submitted on: 2/10/2015

Testimony for HTH on Feb 11, 2015 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Linda Rosen, M.D., M.P.H.	Hawaii Health Systems Corp	Support	Yes

Comments: If you have questions, please contact Dr. Rosen at 733-4151. Thank you.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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From: mailinglist@capitol.hawaii.gov
To: [HTHTestimony](#)
Cc: psgegen@hotmail.com
Subject: Submitted testimony for SB311 on Feb 11, 2015 09:00AM
Date: Monday, February 09, 2015 9:48:46 PM

SB311

Submitted on: 2/9/2015

Testimony for HTH on Feb 11, 2015 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
pat gegen	Kauai Regional Board - HHSC	Comments Only	No

Comments: The Kauai Regional Board supports the intent of SB311. Having a clearly articulated transition plan will assist in ongoing discussions of how best to serve the people of Hawaii who receive medical services at one of the current HHSC facilities while trying to manage the costs to the state. The challenge is to make sure a plan is in place that suits the needs of the state while not discouraging potential partners.

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THE TWENTY-EIGHTH LEGISLATURE
THE SENATE
REGULAR SESSION OF 2015
COMMITTEE ON HEALTH

DATE: Wednesday, February 11, 2015

TIME: 9:00AM

PLACE: State Capitol, Conference Room 016
415 South Beretania Street

Testimony Opposing S.B. 311 & S.B. 795, relating to Hawaii Health Systems Corporation

Chair Green, Vice Chair Wakai and members of the Senate Committee on Health:

Thank you for this opportunity to testify on this very important measure that privatizes the Hawaii Health Systems Corporation. My name is Jacob Smookler, I live in Maui County, and I work as a Hospital Healthcare Security Officer I.

I strongly oppose S.B. 311 and S.B. 795. The state's safety net hospital system should remain a public hospital system. If it is privatized there are no guarantees that the state will save money and thousands of employees would be at risk of losing their jobs and benefits.

Hawaii can do better. It would be prudent to recentralize Hawaii Health Systems Corporation and to conduct full financial and management audits. I respectfully request that you hear and support S.B. 1355.

Sincerely,

Jacob Smookler

Email testimony to hthtestimony@capitol.hawaii.gov.



**Wednesday- February 11, 2015 - 9:00 am
Conference Room 016**

SENATE COMMITTEE ON HEALTH

To: Senator Josh Green, Chair
Senator Glenn Wakai
and Senate Committee members

From: Mr. and Mrs. Thomas Russi

Re: Testimony for SB311

Thank you for this opportunity.

The only thing we oppose about this bill is the first Senator's name that signed it. Senator Josh Green. Unfortunately, we are constituents of Senator Green and when we informed him, two years ago, about our situation of being denied access to the state funded and operated medical facility in Kona, Alii Health Center(AHC/HHSC), because we reported a doctor to HMSA, for billing and being paid for a procedure he never performed, Senator Green turned his back on us telling us to go fix it ourselves with AHC. In trying to regain access to AHC, we were directed to Vincent Rhodes, HHSC Director of Risk Management and unbeknownst to us, ex-husband of Alice Hall, legal counsel, HHSC.

After 6 months of him harassing us, Mr. Rhodes was dismissed. We must assume that Senator Green would not help us because he works at an HHSC funded hospital. Senator Green, being the chair of our health committee and working for HHSC, is a conflict of interest, as far as the citizens on the outer islands. In other words, when a lawmaker violates the law, the other committee members must be made aware. The law that was violated twice, was the UIPA. The OIP is currently investigating, not only his two violations of the UIPA, but the manner in which this lawmaker responded to the OIP on Appeal 15-12.

Although we support this bill, because if it passes, it establishes a transition committee to assist the governor going forward, we do not know enough to be sure if this measure will benefit the citizens of Hawaii, especially the outer island citizens who rely on HHSC using their tax dollars wisely. My wife, Christine and I are always very concerned with the use, and misuse, of tax dollars as in the case of Vincent Rhodes.

In 2013, Alice Hall, hired her ex-husband, to badger us. Mr. Rhodes held his position at HHSC, for only eight months, at which time, he was removed because of complaints filed against him, with the State Ombudsman and the Hawaii Civil Rights Commission, that could not be investigated without holding him accountable. He was paid \$78,567.52, which included vacation pay, when he was removed. This is a serious violation of the public's trust and a misuse of tax dollars within the hospital system. If HHSC is going to work like it was set up to work, this type of personal agenda needs to be stopped and we are not sure if this legislation will stop it, or make it worse. If any legislator checks the work product of Vincent Rhodes from Jan 2013 to Sept 2013, it will definitely shed some light on this situation. We ask that you use your knowledge to make the best choice for voting on this bill, but consider making sure HHSC is always held accountable.

Thank you.

The image shows two handwritten signatures in cursive. The top signature is for Tom Russi and the bottom signature is for Christine Russi. Both are written in dark ink on a white background.

Tom & Christine Russi

February 8, 2015

96740

From: mailinglist@capitol.hawaii.gov
To: [HTHTestimony](#)
Cc: goodhone@gmail.com
Subject: Submitted testimony for SB311 on Feb 11, 2015 09:00AM
Date: Monday, February 09, 2015 8:21:15 PM

SB311

Submitted on: 2/9/2015

Testimony for HTH on Feb 11, 2015 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Virgil Medeiros	Individual	Oppose	No

Comments: I strongly oppose SB311. HHSC must be maintained as a State run system and it's employees continue to be civil servants.

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Cc: kalepa@maui.net
Subject: *Submitted testimony for SB311 on Feb 11, 2015 09:00AM*
Date: Tuesday, February 10, 2015 7:52:03 AM

SB311

Submitted on: 2/10/2015

Testimony for HTH on Feb 11, 2015 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Jonathan Starr	Individual	Oppose	No

Comments:

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To: [HTHTestimony](#)
Cc: smcfarland@hhsc.org
Subject: Submitted testimony for SB311 on Feb 11, 2015 09:00AM
Date: Tuesday, February 10, 2015 8:48:05 AM

SB311

Submitted on: 2/10/2015

Testimony for HTH on Feb 11, 2015 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Scott McFarland	Individual	Support	Yes

Comments: As a Regional CEO within the HHSC System, I support the option of partnerships with private non-profit healthcare systems to address the challenges HHSC hospitals face in continuing to provide vital healthcare services throughout the state, while striving to reduce taxpayer subsidies. The involvement of a private non-profit entity has been identified and recommended by several previous studies, including the requested report to the Legislature delivered in 2010 by Stroudwater Associates. Healthcare today is a very specialized, complex and rapidly changing business. Federal, state and private health insurance providers strive to reduce spending on healthcare; in particular, expensive hospital costs. This is an environment where maintaining revenue is difficult, and increasing revenue is particularly challenging. Operators of healthcare facilities face constant pressure to provide higher quality care and customer satisfaction at lower cost (the triple aim). Investments in specific areas such as health information technology, physician networks, quality improvement, supply chain management, and expertise in revenue cycle maximization are essential. Hawaii non-profit healthcare providers have already invested substantially in this new paradigm. HHSC facilities can benefit from partners who can accelerate access to these investments and also greater economies of scale. HHSC is proud to represent state funded facilities that provide essential healthcare services across the state. But it is recognized that to continue to provide healthcare under a government model as we do today may be unnecessary. Neighbor island communities and our facilities are attracting the interest of private non-profit healthcare systems looking for larger markets and economies of scale. Allowing experts in the healthcare industry to assume more of the responsibility for healthcare in our state can allow precious government dollars to be spent for other needed services. Support of this measure can optimize access to high quality healthcare services and thus contribute to the general economic growth of our state. Thank you for the opportunity to testify.

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From: kauaiboy4200@aol.com
To: [HTHTestimony](#)
Subject: OPPOSITION SB 311
Date: Sunday, February 08, 2015 4:29:58 PM

Greetings Chair Green, Vice Chair Wakai, and committee members:

I am writing in STRONG Opposition to SB

The Purpose and intent of HB 1420 which recentralizes HHSC and provides auditors to complete a full financial and management audit of the system is the correct thing to do before acting on any other bills such as this bill SB 311 and SB 795.

As a citizen of the state of Hawaii in rural Kauai County I have grave concerns over proposed legislation to privatize the safety net hospital system it is a risky proposition which I firmly believe will cause harm to our community and overall cost the tax payer while the legislature relinquishes its oversight on how tax payer dollars are spend and cannot even guarantee the private provider will stay. It is crystal clear that any form of private acquisition will rely heavily on tax payer dollars!

Passing ANY legislation that will enable privatization in any way without fully assessing the HHSC systems financial and management situation is premature and down right negligent.

I humbly implore the legislature to complete its due diligence and ensure satisfactory answers to all its questions before it fractures and sells this states assets

Mahalo for the opportunity to present testimony.

Sincerely,

Joseph A Savino
PO Box 390
Kaunakani, Hawaii 96747

808-652-2092