

CHAPTER 323F
HAWAII HEALTH SYSTEMS CORPORATION

Part I. General Provisions

Section

- 323F-1 Definitions
- 323F-2 Hawaii health systems corporation
- 323F-3 Corporation board
- 323F-3.5 Regional system boards
- 323F-4 Board meetings
- 323F-4.5 Captive insurance board
- 323F-5 Disclosure of interests
- 323F-5.5 Criminal history record checks
- 323F-6 Records
- 323F-7 Duties and powers of the corporation and regional system boards
- 323F-7.5 Regional system boards; delegated authority
- 323F-7.6 Transition of Hawaii health systems regional system or health facility to a new entity
- 323F-8 Chief executive officer; exempt positions
- 323F-8.5 Regional chief executive officer; exempt position
- 323F-9 Hiring of attorneys
- 323F-10 Regional public health facility management advisory committees
- 323F-10.5 Executive public health facility management advisory committee; establishment
- 323F-10.6 Peer review and credentialing
- 323F-11 Executive branch; noninterference
- 323F-12 Public-private partnership

Part II. Budget and Finance

- 323F-21 Fiscal provisions
- 323F-22 Annual audit and report; disclosure of revenue projections; internal performance audit
- 323F-23 Exemption from taxation
- 323F-24 Budget oversight
- 323F-25 Regional system board; community hospitals; community health centers; collaboration

Part III. Other Provisions

- 323F-31 Maintenance of services
- 323F-32 Acquisition of Kahuku hospital
- 323F-33 Hawaii Medical Center-East; affiliation; acquisition
- 323F-34 Tobacco and electronic smoking devices use prohibited

Part IV. Public-Private Partnerships for the Delivery
of Health Care Services at Maui Regional
System Facilities

323F-51 Definitions

323F-52 Transfer of right and responsibility to manage,
operate, and provide health care services in a
facility of the Maui regional system to a
nonprofit management entity

323F-53 Approvals required

323F-54 Real property; terms and conditions

323F-55 Transfer or assignment of other business assets

323F-56 Liabilities

323F-57 Employment, wages, and benefits

323F-58 Operating support

323F-59 Capital project support

323F-60 Strategic commitment during term of lease

Note

Maui regional system facilities; transfer of health care services to a nonprofit management entity; governor to inform the president of the senate and the speaker of the house of representatives of transfer completion dates. L 2015, c 103, §4.

Cross References

Hospital sustainability program, see chapter 346G.

Kahuku medical center; designation as a rural hospital, see §346-53.8.

Nursing facility sustainability program, see chapter 346F.

"PART I. GENERAL PROVISIONS

§323F-1 Definitions. As used in this chapter, unless the context otherwise requires:

"Consumer" means any individual who may utilize a Hawaii health systems facility for health services and is not a provider.

"Corporation" means the body corporate and politic known as the Hawaii health systems corporation.

"Corporation board" means the board of directors of the corporation.

"Department" means the department of health.

"Director" means the director of health.

"Division" means the programs, services, and facilities operated by the department of health, division of community hospitals, prior to the transfer date.

"Health facility" means any one of the facilities that constitute the division of community hospitals.

"Health systems assets" means all property or rights in property, real, personal and mixed, tangible or intangible, existing on the transfer date, used by or accruing to the division in the normal course of its operations.

"Provider" means any supplier of medical or health care goods and services of the type provided at a Hawaii health systems facility.

"Regional system board" means a community-based governing board of directors of a regional system of the corporation.

"Transfer date" means a date agreed to by the department and the corporation for the transfer of health systems assets to and the assumption of health systems liabilities, which includes without limitation, all debts or other obligations, contingent

or certain, owing on such date, by the corporation. [L 1996, c 262, pt of §2; am L 2007, c 290, §17]

" **§323F-2 Hawaii health systems corporation.** (a) There is established the Hawaii health systems corporation, which shall be a public body corporate and politic and an instrumentality and agency of the State. The corporation shall be placed within the department of health for the administrative purposes specified in section 26-35(a)(6) only.

(b) The corporate organization shall be divided into five regional systems, as follows:

- (1) The Oahu regional health care system;
- (2) The Kauai regional health care system;
- (3) The Maui regional health care system;
- (4) The east Hawaii regional health care system, comprising the Puna district, north Hilo district, south Hilo district, Hamakua district, and Kau district; and
- (5) The west Hawaii regional health care system, comprising the north Kohala district, south Kohala district, north Kona district, and south Kona district;

and shall be identified as regional systems I, II, III, IV, and V, respectively. [L 1996, c 262, pt of §2; am L 2004, c 16, §5; am L 2007, c 290, §18]

" **§323F-3 Corporation board.** (a) The corporation shall be governed by an eighteen-member board of directors that shall carry out the duties and responsibilities of the corporation other than those duties and responsibilities relating to the establishment of any captive insurance company pursuant to section 323F-7(c)(20) and the operation thereof.

(b) The members of the corporation board shall be appointed as follows:

- (1) The director of health as an ex officio, voting member;
- (2) The five regional chief executive officers as ex officio, nonvoting members;
- (3) Three members who reside in the county of Maui, two of whom shall be appointed by the Maui regional system board and one of whom shall be appointed by the governor, all of whom shall serve as voting members;
- (4) Two members who reside in the eastern section of the county of Hawaii, one of whom shall be appointed by the East Hawaii regional system board and one of whom shall be appointed by the governor, both of whom shall serve as voting members;

- (5) Two members who reside in the western section of the county of Hawaii, one of whom shall be appointed by the West Hawaii regional system board and one of whom shall be appointed by the governor, both of whom shall serve as voting members;
- (6) Two members who reside on the island of Kauai, one of whom shall be appointed by the Kauai regional system board and one of whom shall be appointed by the governor, both of whom shall serve as voting members;
- (7) Two members who reside on the island of Oahu, one of whom shall be appointed by the Oahu regional system board and one of whom shall be appointed by the governor, both of whom shall serve as voting members; and
- (8) One member who shall be appointed by the governor and serve as an at-large voting member.

The appointed board members who reside in the county of Maui, eastern section of the county of Hawaii, western section of the county of Hawaii, on the island of Kauai, and on the island of Oahu shall each serve for a term of four years; provided that the terms of the initial appointments of the members who are appointed by their respective regional system boards shall be as follows: one of the initial members from the county of Maui shall be appointed to serve a term of two years and the other member shall be appointed to serve a term of four years; the initial member from East Hawaii shall be appointed to serve a term of two years; the initial member from West Hawaii shall be appointed to serve a term of four years; the initial member from the island of Kauai shall be appointed to serve a term of two years; and the initial member from the island of Oahu shall be appointed to serve a term of four years; and provided further that the terms of the initial appointments of the members who are appointed by the governor shall be four years. The at-large member appointed by the governor shall serve a term of two years.

Any vacancy shall be filled in the same manner provided for the original appointments. The corporation board shall elect its own chair from among its members. Appointments to the corporation board shall be as representative as possible of the system's stakeholders as outlined in this subsection. The board member appointments shall strive to create a board that includes expertise in the fields of medicine, finance, health care administration, government affairs, human resources, and law.

(c) The selection, appointment, and confirmation of any nominee shall be based on ensuring that board members have diverse and beneficial perspectives and experiences and that they include, to the extent possible, representatives of the

medical, business, management, law, finance, and health sectors, and patients or consumers. Members of the board shall serve without compensation but may be reimbursed for actual expenses, including travel expenses incurred in the performance of their duties.

(d) Any member of the board may be removed for cause by vote of a two-thirds majority of the board's members then in office. For purposes of this section, cause shall include without limitation:

- (1) Malfeasance in office;
- (2) Failure to attend regularly called meetings;
- (3) Sentencing for conviction of a felony, to the extent allowed by section 831-2; or
- (4) Any other cause that may render a member incapable or unfit to discharge the duties required under this chapter.

Filing nomination papers for elective office or appointment to elective office, or conviction of a felony consistent with section 831-3.1, shall automatically and immediately disqualify a board member from office. [L 1996, c 262, pt of §2; am L 1997, c 265, §1; am L 1998, c 229, §4; am L 2007, c 278, §3 and c 290, §19; am L 2009, c 182, §9; am L 2011, c 126, §2; am L 2013, c 278, §2]

" **§323F-3.5 Regional system boards.** (a) There is hereby established a regional system board of directors to govern each of the five regional systems specified in section 323F-2, no later than January 1, 2008. The regional system boards of directors shall carry out the duties and responsibilities as set forth in this chapter and as further delegated by the corporation.

(b) Upon its establishment, a regional system board shall assume custodial care of all financial assets, real property, including land, structures, and fixtures, or other physical assets, such as personal property, including furnishings, equipment, and inventory, of the corporation within its regional system. No sale or encumbrance of any such real property or such other financial assets, physical assets of the corporation shall be permitted without the mutual consent of the Hawaii health systems corporation board and the appropriate regional system board. No additional debts or liabilities or superior debts shall be added by the corporation to any regional system board that would negatively impact the holders of bond notes. Each regional system board shall be liable for any liabilities arising from financial assets, real or personal property in its custodial care.

(c) Each regional system shall be governed by a regional system board of directors to consist of not less than seven members and not more than fifteen members, as determined by the regional system board after the initial regional system board is established.

(1) Each regional system board shall initially consist of twelve members to be appointed by the governor under section 26-34 or as provided in this section, as follows:

(A) Four members shall be appointed by the governor within thirty days of receipt of a qualified list of candidates as follows:

(i) Two members shall be chosen from a list of four individuals submitted by the speaker of the house of representatives within fifteen days of July 1, 2007; provided that this list shall not include physicians; and

(ii) Two members shall be chosen from a list of four individuals submitted by the president of the senate within fifteen days of July 1, 2007; provided that this list shall not include physicians;

(B) Four members shall be appointed by the governor within thirty days from a list of eight individuals nominated by the regional public health facility management advisory committee within fifteen days of July 1, 2007. These individuals may be medical and health care providers and professionals, consumers, and knowledgeable individuals in other appropriate areas such as business, finance, and law; provided that these individuals shall not be physicians currently in active practice;

(C) Three physicians shall be appointed by the governor within thirty days from a list submitted within fifteen days of July 1, 2007, of six physicians nominated by a majority vote of the medical staff of the public health facilities in the regional system present at a duly noticed meeting from a list of qualified candidates submitted by the medical executive committees in the regional system; and

(D) The corporation board chairperson or chairperson's designee shall serve as an ex officio, nonvoting member of each regional system board;

- (2) One member of each regional system board nominated by the speaker of the house of representatives, the president of the senate, and medical executive committees in a regional system shall be appointed for a term of two years;
- (3) One member of each initial regional system board nominated by the regional public health facility management advisory committee for the regional system shall be appointed for a term of two years;
- (4) The remaining members of each initial regional system board and all members appointed thereafter shall be appointed for terms of three years; and
- (5) New regional system board members appointed to any regional system board after the initial regional system board shall be selected by a two-thirds affirmative vote of the existing regional system board members.

Except for the ex officio members of each regional system board, all other members of a regional system board shall be residents of the region. Each regional system board shall elect its own chair.

- (d) Each regional system board shall:
 - (1) Be responsible for local governance, operations, and administration of the delivery of services in its respective regional system as set forth in this chapter and as further delegated by the corporation;
 - (2) Include medical and health care providers and professionals, consumers, and knowledgeable individuals in other appropriate areas, such as business, finance, and law; provided that no more than three members of the regional system board shall be physicians;
 - (3) Be as balanced and representative of the community stakeholders as possible; and
 - (4) Have the powers, duties, and responsibilities that are specific to the regional system board as provided in this chapter.

(e) Any member of a regional system board may be removed for cause by the governor or for cause by vote of a two-thirds majority of the regional system board's voting members then in office. For purposes of this section, "cause" shall include without limitation:

- (1) Malfeasance in office;
- (2) Persistent failure to attend regularly called meetings;
- (3) Sentencing for conviction of a felony, to the extent allowed by section 831-3.1; or

- (4) Any other cause that may render a member incapable of discharging or unfit to discharge the duties required under this chapter. [L 2007, c 290, pt of §2; am L 2009, c 182, §10]

Revision Note

"July 1, 2007" substituted for "the effective date of this Act".

" **§323F-4 Board meetings.** (a) The corporation board and each regional system board shall be exempt from part I of chapter 92 and shall meet no fewer than four times a year; provided that the regional system boards and the corporation board shall meet together at least once a year. Each regional board shall meet at least six times each year; provided that two of these meetings shall be public community meetings for the purpose of informing the community and taking comment on the regional system's performance if these meetings are in addition to the four board meetings. The public community meetings shall be advertised in a newspaper of general circulation in the regional system at least two weeks in advance.

(b) All business of the corporation board and each regional system board shall be conducted at a regular or special meeting at which a quorum is present, consisting of at least a majority of the directors then in office. The corporation board and each regional system board shall adopt procedural rules for meetings, not subject to chapter 91, that shall include provisions for meetings via electronic and telephonic communications and other methods that allow the boards to conduct business in a timely and efficient manner. Any action of the corporation board or each regional system board shall require the affirmative vote of a majority of those present and voting at the meeting; except that a vote of two-thirds of the entire membership of the respective board then in office shall be required for any of the following actions:

- (1) Removal by the corporation board or respective regional system board of one of its members;
- (2) Amendment by the corporation or a regional system board of its bylaws;
- (3) Hiring or removing a regional chief executive officer;
- (4) Filling of vacancies on a board; and
- (5) Any other actions as provided by the corporation or regional system board bylaws, except the hiring or removing of the chief executive officer of the corporation. [L 1996, c 262, pt of §2; am L 1998, c 229, §5; am L 2007, c 290, §20; am L 2009, c 182, §11]

" **[§323F-4.5] Captive insurance board.** (a) There is established a ten-member captive insurance board that shall carry out the corporation's duties and responsibilities relating to the establishment of any captive insurance company pursuant to section [323F-7(c)(20)] and the operation thereof.

(b) Eight members of the captive insurance board shall be appointed by the governor as follows:

- (1) Three members from a list of five persons submitted by the president of the senate; provided that at least one of these members shall have experience in the insurance industry and financial matters;
- (2) Three members from a list of five persons submitted by the speaker of the house of representatives; provided that at least one of these members shall have experience in the insurance industry and financial matters; and
- (3) Two members, one of whom shall be the chief executive officer or chief financial officer of an insurer licensed to do business in the State and shall serve as a nonvoting member.

The director of health or the director's designee and the insurance commissioner or the commissioner's designee shall serve as ex officio, nonvoting members.

Any vacancy shall be filled in the same manner provided for the original appointments. The captive insurance board shall elect its own chair from among its members.

(c) The selection, appointment, and confirmation of any appointed nominee shall be based on ensuring that captive insurance board members have diverse and beneficial perspectives and experiences and that they include, to the extent possible, representatives of the insurance and/or finance sectors. Members of the captive insurance board shall serve without compensation but may be reimbursed for actual expenses, including travel expenses incurred in the performance of their duties.

(d) Any appointed member of the captive insurance board may be removed for cause by the governor or for cause by vote of a two-thirds majority of the captive insurance board members then in office. For purposes of this section, cause shall include without limitation:

- (1) Malfeasance in office;
- (2) Failure to attend regularly called meetings;
- (3) Sentencing for conviction of a felony, to the extent allowed by section 831-2; or

- (4) Any other cause that may render a member incapable or unfit to discharge the duties required under this chapter.

Filing nomination papers for elective office, appointment to elective office, or conviction of a felony consistent with section 831-3.1, shall automatically and immediately disqualify a board member from office.

(e) No member of the captive insurance board shall be an employee or vendor of the corporation, or an immediate family member thereof. For purposes of this subsection, "immediate family member" means a corporation board employee's or vendor's spouse, child, parent, grandparent, or any related individual who resides in the same household of the employee or vendor. [L 2007, c 278, §2]

" **§323F-5 Disclosure of interests.** All corporation and regional system board members and employees of the corporation shall be subject to chapter 84. [L 1996, c 262, pt of §2; am L 2007, c 290, §21]

" **[§323F-5.5] Criminal history record checks.** (a) The corporation may request a criminal history record check of persons who are employed or seeking employment, or are current or prospective contractors, providers, or volunteers in any of the corporation's health facilities, in accordance with section 846-2.7.

(b) For the purpose of this section, the criminal history record check shall be performed by the Hawaii criminal justice data center. The Hawaii criminal justice data center may assess providers and contractors a reasonable fee for criminal history record checks performed. Providers and contractors shall be responsible for payment to the Hawaii criminal justice data center of the fee for the criminal history record checks.

(c) Any person who is a current or prospective member of the corporation board or regional system board; employed or who seeks employment with the corporation; or is a current or prospective contractor, provider, or volunteer in any of the corporation's health facilities may be required to provide to the corporation:

- (1) Personal identifying information including name, social security number, and date of birth;
- (2) Written consent for the corporation to obtain criminal history record check information for verification; and
- (3) Written consent to be fingerprinted for the purpose of a criminal history record check.

Information obtained pursuant to subsection (a) and this subsection shall be used by the corporation exclusively for the purposes of this section.

(d) Any inquiry into or consideration of the criminal history record of an employee or prospective employee of the corporation shall be limited to that which is allowed under section 378-2.5 or required under federal law.

(e) A current or prospective contractor, provider, or volunteer or a current or prospective member of the corporation board or regional system board who has been convicted of a criminal offense for which incarceration is a sentencing option, may be terminated, released, or not used. This action shall be based on the corporation's analysis of whether the nature and circumstances of the crime may pose a risk to the health, safety, or well-being of patients, residents, and organizations in its health facilities.

(f) For the purposes of this section:

"Contractor" means any individual who enters into a contract or agreement to provide services to the patients or residents in any of the corporation's health facilities.

"Criminal history record check" means an examination of an individual's criminal history records by means including fingerprint analysis and name inquiry into state and national criminal history record files.

"Provider" means any individual who currently provides or intends to enter into a contract or agreement to provide services to the patients or residents in any of the corporation's health facilities, or is a student in any program at any of the corporation's health facilities. [L 2009, c 182, §6]

" **§323F-6 Records.** (a) The corporation and each regional system board shall be subject to the requirements of chapter 92F, except that the following categories of government records shall not be required to be disclosed:

- (1) Applications for credentials or staff privileges at any of the corporation's medical facilities, records from peer review proceedings, and medical records; and
- (2) Marketing strategies, strategic plans, evaluations, assessments, negotiations, or rates and charges, the disclosure of which would raise the cost of procurement or give a manifestly unfair advantage to any competitor or to any person or entity seeking to do business or proposing to enter into an agreement with a regional system board, the corporation, or any of its facilities.

Any person denied access to any such government records shall have available the remedies specified in sections 92F-15 and 92F-15.5. Government records protected from disclosure by this section shall be subject to the interagency disclosure provisions of section 92F-19. Section 624-25.5 shall apply to this part notwithstanding anything to the contrary contained in this section.

(b) The corporation shall have the authority to set rates for copies of records protected by this section from the disclosure requirements of chapter 92F. For medical records subpoenaed from any of the corporation's regional system facilities, copies shall be paid for by the requester in an amount based on the facility's actual cost of preparation; provided that the amount shall be no less than \$1 per page and no more than \$2 per page. [L 1996, c 262, pt of §2; am L 2007, c 290, §22; am L 2016, c 73, §1]

" **§323F-7 Duties and powers of the corporation and regional system boards.** (a) Notwithstanding any other law to the contrary and unless otherwise specified, only those duties and powers related to corporation-wide matters, including but not limited to corporation-wide budgeting, personnel policies, procurement policies, fiscal policies, accounting policies, policies related to affiliations, joint ventures and contracts, regulatory compliance, risk management, continuing medical education programs, strategic planning, and capital planning, including the issuance of revenue bonds in any amount, shall be carried out by the corporation board in collaboration with the regional system boards. Duties and powers related to the operation of facilities within each regional system, including but not limited to regional system and facility budgeting, employment and removal of regional system and facility personnel, purchasing, regional system strategic and capital planning, organization, quality assurance, improvement and reporting, credentialing of medical staff, and the issuance of revenue bonds in any amount with corporation board approval, shall be carried out by the regional system boards, either directly or by delegation to regional and facility administration. Unless otherwise prohibited, the duties and powers granted to the corporation board may be delegated to the regional system boards.

(b) Duties and powers exercised by the regional system boards under this chapter or delegated to the regional system boards by the corporation board shall be consistent with corporation-wide policies. Wherever appropriate, corporation-wide policies shall take into account differences among regional systems and among types of facilities, particularly acute care,

critical access, and long-term care facilities within the system.

New corporation-wide policies, and major changes to existing policies other than those changes mandated by legal or regulatory requirements, shall be developed by the corporation board after consultation with a policies committee. The policies committee shall be made up of representatives of the corporation board and each regional system board or designees of each board. The corporation board shall have two representatives on this committee. The corporation board shall review and consider approval of the policies within thirty days of transmittal by the policies committee or at the next board meeting; provided that, if the policies committee fails to take action within thirty days of receiving the proposed policy, the corporation board may consider and adopt or reject or revise the policy. The regional system boards and corporation board, as needed, may submit a request to the committee to alter corporation-wide policies along with detailed justification for the request. The regional system boards and the corporation board shall collaboratively establish a procedure to further implement this section.

(c) Notwithstanding any other law to the contrary, the corporation and any of the regional system boards shall exercise the following duties and powers:

- (1) Developing corporation-wide policies, procedures, and rules necessary or appropriate to plan, operate, manage, and control the system of public health facilities and services without regard to chapter 91; provided that each regional system board shall be responsible for its own policies, procedures, and rules necessary or appropriate to plan, operate, manage, and control the public health facilities within its own regional system consistent with corporation policies;
- (2) Evaluating the need for additional health facilities and services; provided that each regional system board shall be responsible for the evaluation within its own regional system;
- (3) Entering into and performing any contracts, leases, cooperative agreements, partnerships, or other transactions whatsoever that may be necessary or appropriate in the performance of its purposes and responsibilities, and on terms the corporation, or regional system boards, may deem appropriate, with either:

- (A) Any agency or instrumentality of the United States, or with any state, territory, or possession, or with any subdivision thereof; or
- (B) Any person, firm, association, partnership, or corporation, whether operated on a for-profit or not-for-profit basis;

provided that the transaction furthers the public interest; and provided further that if any dispute arises between any contract, lease, cooperative agreement, partnership, or other transaction entered into by the corporation and a regional system board with regard to matters solely within that regional system, after July 1, 2007, the contract, lease, cooperative agreement, partnership, or other transaction entered into by the regional system board shall prevail; and provided further that such agreements are consistent with corporation policies;

- (4) Conducting activities and entering into business relationships as the corporation board, or any regional system board, deems necessary or appropriate, including but not limited to:
 - (A) Creating nonprofit corporations, including but not limited to charitable fund-raising foundations, to be controlled wholly by the corporation, any regional system board, or jointly with others;
 - (B) Establishing, subscribing to, and owning stock in business corporations individually or jointly with others; and
 - (C) Entering into partnerships and other joint venture arrangements, or participating in alliances, purchasing consortia, health insurance pools, or other cooperative arrangements, with any public or private entity; provided that any corporation, venture, or relationship entered into under this section furthers the public interest; provided further that this paragraph shall not be construed to authorize the corporation or a regional system board to abrogate any responsibility or obligation under paragraph (15);

provided that each regional system board shall be responsible for conducting the activities under this paragraph in its own regional system consistent with policies established by the corporation board;

- (5) Participating in and developing prepaid health care service and insurance programs and other alternative

health care delivery programs, including programs involving the acceptance of capitated payments or premiums that include the assumption of financial and actuarial risk; provided that each regional system board shall be responsible for conducting the activities under this paragraph in its own regional system consistent with policies established by the corporation board;

- (6) Executing, in accordance with all applicable bylaws, rules, and laws, all instruments necessary or appropriate in the exercise of any powers of the corporation or regional system boards;
- (7) Preparing and executing all corporation-wide budgets, policies, and procedures or any regional system budgets, policies, and procedures; provided that the regional system boards shall submit their regional and facility budgets to the corporation to be consolidated into a corporation-wide budget for purposes of corporation-wide planning and appropriation requests. Regional system and facility budgets shall be received by the corporation and shall be included in the corporation-wide budget upon submittal to the corporation;
- (8) Setting rates and charges for all services provided by the corporation without regard to chapter 91; provided that the duty and power of the corporation board shall be limited to approving the rates and charges developed by the regional system boards for the regional system's facilities and services. Rates and charges may vary among regional systems and facilities and may be consolidated with the rates of other regional systems into one charge master. Third-party payer contracts may be negotiated at the corporation-wide level with input from the regional systems, taking into consideration the rates set by the regional system boards. For purposes of securing revenue bonds, the corporation or regional system board may covenant to set, and if necessary increase, rates and charges as needed to pay debt service and related obligations plus a coverage factor;
- (9) Developing a corporation-wide hospital system that is subject to chapters 76 and 89; provided that employment of regional system and facility personnel shall be the responsibility of the regional system boards pursuant to corporation-wide policies and procedures, applicable laws, rules, regulations, and collective bargaining agreements;

- (10) Developing the corporation's corporation-wide capital and strategic plans or any regional system board's capital and strategic plans; provided that each regional system board shall be responsible for development of capital and strategic plans in its own regional system that shall be consistent with, and incorporated into, the overall corporation-wide plans; and provided further that the corporation and each regional system board shall be entitled to undertake the acquisition, construction, and improvement of property, facilities, and equipment to carry out these capital and strategic plans;
- (11) Suing and being sued; provided that only the corporation may sue or be sued; and provided further that the corporation and regional system boards shall enjoy the same sovereign immunity available to the State;
- (12) Making and altering corporation board and regional system board bylaws for its organization and management without regard to chapter 91 and consistent with this chapter; provided that each regional system board shall be responsible for the final approval of its regional system board bylaws;
- (13) Adopting rules without regard to chapter 91 governing the exercise of the corporation's or regional system boards' powers and the fulfillment of its purpose under this chapter;
- (14) Entering into any contract or agreement whatsoever, not inconsistent with this chapter or the laws of this State, and authorizing the corporation, regional system boards, and chief executive officers to enter into all contracts, execute all instruments, and do all things necessary or appropriate in the exercise of the powers granted in this chapter, including securing the payment of bonds; provided that the corporation board shall delegate to a regional system board its authority to enter into and execute contracts or agreements relating to matters exclusively affecting that regional system; provided further that a regional system board shall exercise this power consistent with corporation-wide policies; and provided further that contracts or agreements executed by a regional system board shall encumber only the regional subaccounts of that regional system board;
- (15) Issuing revenue bonds up to \$100,000,000 subject to the approval of the governor or the director of finance; provided that:

- (A) All revenue bonds shall be issued pursuant to part III, chapter 39;
 - (B) The corporation and any regional system board shall have the power to issue revenue bonds in any amount without regard to any limitation in chapter 39; and
 - (C) The corporation shall have the power to incur debt, including the issuance of revenue bonds in any amount, and the regional system boards shall have the power to issue revenue bonds in any amount upon approval by the corporation board;
- (16) Reimbursing the state general fund for debt service on general obligation bonds or reimbursable general obligation bonds issued by the State for the purposes of the corporation or any regional system board;
- (17) Pledging or assigning all or any part of the receipts, revenues, and other financial assets of the corporation or the regional system boards for purposes of meeting or securing bond or health systems liabilities; provided that each regional system board shall be responsible for conducting the activities under this paragraph in its own regional system. Any pledge or assignment by the corporation or any regional system board to secure revenue bonds or health system liabilities shall be valid and binding in accordance with its terms against the pledgor, creditors, and all others asserting rights thereto from the time the pledge or assignment is made, without the need of physical delivery, recordation, filing, or further act. The corporation shall not take or omit to take any act that would interfere with, impair, or adversely affect any pledge or assignment by a regional system board pursuant to this chapter. In connection with issuing revenue bonds or related obligations, consistent with corporation policies and procedures, any regional system board may make such other covenants, binding on the regional system board and the corporation, that the regional system board determines to be necessary or appropriate to establish and maintain security for the revenue bonds or related obligations;
- (18) Owning, purchasing, leasing, exchanging, or otherwise acquiring property, whether real, personal, or mixed, tangible or intangible, and of any interest therein, in the name of the corporation, which property is not owned or controlled by the State but is owned or controlled by the corporation; provided that:

- (A) Regional system boards shall have custodial control over facilities and physical assets in their respective regional systems. A regional system board may own, purchase, lease, exchange, or otherwise acquire property, whether real, personal, or mixed, tangible or intangible, and of any interest therein, other than property owned or controlled by the corporation, in the name of the regional system board; provided further that a regional system board shall be subject to section 323F-3.5; and
 - (B) Each regional system board shall be responsible for conducting the activities under this paragraph in its own regional system;
- (19) Maintaining, improving, pledging, mortgaging, selling, or otherwise holding or disposing of property, whether real, personal, or mixed, tangible or intangible, and of any interest therein, at any time and manner, in furtherance of the purposes and mission of the corporation or any regional system board; provided that the corporation or any regional system board legally holds or controls the property in its own name; provided further that other than to secure revenue bonds and related obligations and agents, and to transition into a new entity, the corporation or any regional system board shall not sell, assign, lease, hypothecate, mortgage, pledge, give, or dispose of all or substantially all of its property; and provided further that each regional system board shall be responsible for conducting the activities under this paragraph in its own regional system, and control over such property shall be delegated to each regional system board; provided further that this paragraph shall not be construed to authorize the sale, pledge, or mortgage of real property under the control of the corporation or a regional system board;
- (20) Purchasing insurance and creating captive insurers in any arrangement deemed in the best interest of the corporation, including but not limited to funding and payment of deductibles and purchase of reinsurance; provided that only the corporation shall have the power to create captive insurers to benefit public health facilities and operations in all regional systems; and provided further that a regional system board may purchase insurance for its regional system in collaboration with the other regional systems and

- the corporation until captive coverage is provided by the corporation;
- (21) Acquiring by condemnation, pursuant to chapter 101, any real property required by the corporation to carry out the powers granted by this chapter;
 - (22) Depositing any moneys of the corporation or any regional system board in any banking institution within or without the State, and appointing, for the purpose of making deposits, one or more persons to act as custodians of the moneys of the corporation or any regional system board; provided that regional system boards may deposit moneys in banking institutions pursuant to corporation-wide guidelines established by the corporation board;
 - (23) Contracting for and accepting any gifts, grants, and loans of funds, property, or any other aid in any form from the federal government, the State, any state agency, or any other source, or any combination thereof, and complying, subject to this chapter, with the terms and conditions thereof; provided that the regional system boards shall be responsible for contracting for and accepting any gifts, grants, loans, property, or other aid if intended to benefit the public health facilities and operations exclusively in their respective regional systems; and provided further that all contracting for or acceptance of gifts, grants, loans, property, or other aid shall be consistent with corporation-wide policies established by the corporation board;
 - (24) Providing health and medical services for the public directly or by agreement or lease with any person, firm, or private or public corporation, partnership, or association through or in the health facilities of the corporation or regional system boards or otherwise; provided that the regional system boards shall be responsible for conducting the activities under this paragraph in their respective regional systems;
 - (25) Approving medical staff bylaws, rules, and medical staff appointments and reappointments for all public health facilities of the corporation or any regional system board, including but not limited to determining the conditions under which a health professional may be extended the privilege of practicing within a health facility, as determined by the respective regional system board and consistent with corporation-wide policies, and adopting and implementing

reasonable rules, without regard to chapter 91, for the credentialing and peer review of all persons and health professionals within the facility; provided that regional system boards shall be the governing body responsible for all medical staff organization, peer review, and credentialing activities to the extent allowed by law;

- (26) (A) Investing any funds not required for immediate disbursement in property or in securities that meet the standard for investments established in chapter 88 as provided by the corporation board or any regional system board; provided that proceeds of bonds and moneys pledged to secure bonds may be invested in obligations permitted by any document that authorizes the issuance or securing of bonds; and provided further that the investment assists the corporation or any regional system board in carrying out its public purposes; selling from time to time securities thus purchased and held, and depositing any securities in any bank or financial institution within or without the State. Any funds deposited in a banking institution or in any depository authorized in this section shall be secured in a manner and subject to terms and conditions as the corporation board or a regional system board may determine, with or without payment of any interest on the deposit, including without limitation time deposits evidenced by certificates of deposit. Any bank or financial institution incorporated under the laws of this State may act as depository of any funds of the corporation or a regional system board and may issue indemnity bonds or may pledge securities as may be required by the corporation or regional system board; provided that regional system boards may exercise the powers under this subsection with respect to financial assets of the regional system consistent with corporation-wide policies; and
- (B) Notwithstanding subparagraph (A), contracting with the holders of any of its notes or bonds as to the custody, collection, securing, investment, and payment of any moneys of the corporation or regional system board and of any moneys held in trust or otherwise for the payment of notes or bonds and carrying out the contract. Moneys held

in trust or otherwise for the payment of notes or bonds or in any way to secure notes or bonds, and deposits of such moneys, may be secured in the same manner as moneys of the corporation or regional system board, and all banks and trust companies are authorized to give security for the deposits;

- (27) Entering into any agreement with the State, including but not limited to contracts for the provision of goods, services, and facilities in support of the corporation's programs or the regional system boards' programs, and contracting for the provision of services to or on behalf of the State; provided that the regional system boards shall be responsible for entering into agreements to provide goods, services, and facilities in support of programs in their respective regional systems consistent with corporation-wide policies;
- (28) Having a seal and altering the same at pleasure;
- (29) Waiving, by means that the corporation or regional system board deems appropriate, the exemption from federal income taxation of interest on the corporation's or regional system boards' bonds, notes, or other obligations provided by the Internal Revenue Code of 1986, as amended, or any other federal statute providing a similar exemption;
- (30) Developing internal policies and procedures for the procurement of goods and services, consistent with the goals of public accountability and public procurement practices, and subject to management and financial legislative audits; provided that the regional system boards shall be responsible for developing internal policies and procedures for each of their regional systems consistent with the corporation's policies and procedures; and further provided that:
 - (A) The regional system boards and the corporation board shall enjoy the exemption under section 103-53(e);
 - (B) The regional system boards shall enjoy the exemption under chapter 103D; and
 - (C) The corporation shall be subject to chapter 103D;
- (31) Authorizing and establishing positions; provided that regional system boards shall be responsible for hiring and firing regional and facility personnel consistent with corporation policies, except a regional chief executive officer shall only be hired or dismissed

upon the approval of the regional system board as further set forth in section 323F-8.5;

- (32) Having and exercising all rights and powers necessary or incidental to or implied from the specific powers granted in this chapter, which specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this chapter; provided that the regional system boards shall be responsible for having and exercising all powers and rights with respect to matters in their regional systems consistent with the law; and
- (33) Each regional system, through its regional system board, shall:
 - (A) Develop policies and procedures necessary or appropriate to plan, operate, manage, and control the day-to-day operations of facilities within the regional system that are consistent with corporation-wide policies;
 - (B) Exercise custodial control over and use of all assets of the corporation that are located in the regional system pursuant to this chapter; and
 - (C) Expend funds within its approved regional system budget and expend additional funds in excess of its approved regional system budget upon approval of the corporation board.

(d) Each regional system board shall not be subject to chapters 36 to 38, 40, 41D, and 103D as well as part I of chapter 92 and shall enjoy the exemptions contained in sections 102-2 and 103-53(e), except as otherwise provided in this chapter. The corporation shall not be subject to chapters 36 to 38, 40, and 41D, as well as part I of chapter 92, and shall enjoy the exemptions contained in sections 102-2 and 103-53(e); provided that the exemption provided under this subsection to chapter 37D shall only apply to financing agreements of \$5,000,000 or less; provided further that the aggregate value of financing agreements per fiscal year shall not exceed \$25,000,000.

(e) The duties and powers granted to the corporation or any regional system board may not be used to enter into contractual or business relationships that have the practical effect of allowing or are intended to allow private-sector counterparts to replace existing employee positions or responsibilities within the corporation or in any regional system or its facilities; provided the corporation or regional system boards shall be allowed to enter into such relationships to the extent and for the purposes that the division of

community hospitals could have done under collective bargaining contracts that were in effect for the 1995-1996 fiscal year. [L 1996, c 262, pt of §2; am L 1998, c 229, §6; am L 2000, c 279, §6; am L 2002, c 148, §37; am L 2004, c 216, §37; am L 2007, c 290, §23; am L 2009, c 182, §12]

" **[§323F-7.5] Regional system boards; delegated authority.** If the Hawaii health systems corporation board is unable to act on important transactions in as timely a manner as the chairperson of the corporation board deems reasonable, the chairperson of the corporation board may further delegate authority to the regional system boards to take action on specific matters. [L 2007, c 290, pt of §2]

" **[§323F-7.6] Transition of Hawaii health systems regional system or health facility to a new entity.** (a) Notwithstanding any other law to the contrary, including but not limited to section 27-1 and chapter 171, any of the regional systems or individual facilities of the Hawaii health systems corporation is hereby authorized to transition into a new legal entity in any form recognized under the laws of the State, including but not limited to:

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

A transition shall occur through the sale, lease, or transfer of all or substantially all of the assets of the facility or regional system, except for real property which shall only be transferred by lease. Any transition shall comply with chapter 323D.

(b) A transition shall only occur upon approval of the appropriate regional system board in the case of a regional system or individual facility transition, or upon approval of the regional system boards and the corporation in the case of the transition of the entire corporation. Any transition shall be subject to legal review by the attorney general who shall approve the transition if satisfied that the transition conforms to all applicable laws, subject to the review of the director of the department of budget and finance who shall approve the transition if it conforms to all applicable financing procedures, and subject to the governor's approval. In addition the transition shall be subject to the following terms and conditions:

- (1) All proceeds from the sale, lease, or transfer of assets shall be used for health care services in the respective regional system or facility, except that real property shall only be transferred by lease;
- (2) Any and all liabilities of a regional system or facility transitioning into a new entity that were transferred to the Hawaii health systems corporation upon its creation by Act 262, Session Laws of Hawaii 1996, and all liabilities of the regional system or facility related to collective bargaining contracts negotiated by the State, shall become the responsibility of the State; and
- (3) During the period of transition:
 - (A) The State shall continue to fund the provision of health care services provided for by the regional system or individual facility; and
 - (B) All applicable provisions of this chapter shall continue to apply.

Upon the completion of the transition of all the facilities in a regional system to a new entity, the regional system board for that regional system shall terminate; provided that if not all of a regional system's facilities are transitioned to a new entity, the existing regional system board shall not terminate but shall continue to retain jurisdiction over those facilities remaining in the regional system. [L 2009, c 182, pt of §8]

" **§323F-8 Chief executive officer; exempt positions.** (a) The corporation board may appoint, by majority vote of its entire membership, a chief executive officer of the corporation whose salary shall be set by the corporation board and who shall be exempt from chapter 76 and section 26-35(a)(4). The chief executive officer may also appoint up to eighteen other personnel, exempt from chapters 76 and 89, to work directly for the chief executive officer and the corporate board.

(b) The corporation board or its designee may discharge its exempt personnel with or without cause; provided that removal without cause shall not prejudice any contract rights of personnel.

The discharge of the chief executive officer shall require a majority vote of the entire membership of the corporation board.

(c) The corporation's chief executive officer or the chief executive officer's designee may appoint, exempt from chapters 76 and 89, hospital administrators, assistant administrators, directors of nursing, medical directors, and staff physicians, to facilitate the management of facilities within the corporation; provided that directors of nursing appointed before

July 1, 1998, may maintain their civil service status as provided in chapter 76 by so communicating in writing to the chief executive officer by October 31, 1998. Hospital administrators and assistant administrators appointed before July 1, 1983, may maintain their permanent civil service status as provided in chapter 76.

(d) Hiring, firing, compensation packages, and other personnel actions with respect to employees not covered by chapter 76 and 89 shall be governed by policies and guidelines established by the corporation, except as otherwise provided in this chapter.

(e) Upon the establishment of a regional system board, the authority to appoint regional hospital administrators, assistant administrators, directors of nursing, medical directors, and staff physicians under subsection (c) shall be superseded by section 323F-8.5 for that regional system. No incumbent personnel shall lose a position without specific action taken by the regional system board. [L 1996, c 262, pt of §2; am L 1998, c 229, §7; am L 2000, c 253, §150; am L 2002, c 148, §38; am L 2004, c 16, §6; am L 2007, c 290, §24; am L 2009, c 182, §13]

" **§323F-8.5 Regional chief executive officer; exempt position.** (a) Upon establishment, a regional system board may appoint a regional chief executive officer whose salary shall be set by the corresponding regional system board and may discharge a regional chief executive officer; provided that the position shall be exempt from chapter 76 and section 26-35(a)(4). Each regional chief executive officer may also appoint, as necessary, other personnel, exempt from chapters 76 and 89, to work directly for the regional chief executive officer for the regional system and for the corresponding regional system board.

(b) Any regional system board or its designee may discharge its exempt personnel with or without cause; provided that removal without cause shall not prejudice any contract rights of personnel.

(c) Each regional chief executive officer or their designees may appoint, exempt from chapters 76 and 89, hospital administrators, assistant administrators, directors of nursing, medical directors, and staff physicians, to facilitate the management of facilities within the regional system.

(d) Hiring, firing, compensation packages, and other personnel actions with respect to employees not covered by chapters 76 and 89 shall be governed by policies adopted by each regional system board. These policies and guidelines shall be consistent with policies and guidelines adopted by the corporation board after consultation with the regional system boards. [L 2007, c 290, pt of §2; am L 2009, c 182, §14]

" **§323F-9 Hiring of attorneys.** The corporation and regional system boards may employ or retain any attorney, by contract or otherwise, for the purpose of representing the corporation or regional system boards in any litigation, rendering legal counsel, or drafting legal documents for the corporation or regional system boards. [L 1996, c 262, pt of §2; am L 2007, c 290, §25]

" **§323F-10 Regional public health facility management advisory committees.** (a) On the transfer date, there shall be established within the corporation for each region, a public health facility management advisory committee to consist of nine members initially to be appointed by the chief executive officer of the corporation with the advice of the hospital administrators of the facilities in the affected regions. The members shall serve for a term of four years; provided that upon the initial appointment of the members, two shall be appointed for a term of one year, two for a term of two years, two for a term of three years, and three for a term of four years.

Following the initial appointments by the chief executive officer of the corporation board, any vacancies on a regional committee shall be filled by a simple majority vote of the members of the executive committee from a list of qualified nominees submitted by the regional committee in which the vacancy occurred. If a regional committee vacancy remains unfilled for more than thirty days, that vacancy may be filled by the chief executive officer of the corporation.

Each regional management advisory committee shall include medical and health care providers, consumers, and knowledgeable individuals in other appropriate areas such as business and law; provided that at least one member shall be a physician with active medical staff privileges at one of the region's public health facilities. At least three members of the committee shall be consumers.

The management advisory committee for the East Hawaii region shall have three members who reside in the Ka'u district, three members who reside in the Hamakua/North Hilo districts, and three members who reside in the South Hilo/Puna districts. The management advisory committee for the West Hawaii region shall have not less than three members who reside in the North Kohala/South Kohala districts.

Each regional committee shall select its own chairperson and vice chairperson and shall adopt rules governing the terms for removal of its chairperson from the executive management advisory committee. In the event of a regional committee voting to remove its chairperson who concurrently sits on the

corporation board, that vote shall be unanimous. In the event of a regional committee voting to remove its physician member from the corporation board, that vote shall also be unanimous. Each regional committee may also adopt other rules as it may consider necessary for the conduct of its business.

The members of the regional committees shall serve without compensation, but shall be reimbursed for traveling expenses incurred in the performance of their duties. The corporation shall provide for the necessary expenses of the committees; provided that no expenses may be incurred without prior authorization by the chief executive officer.

(b) Each regional committee shall sit in an advisory capacity to the chief executive officer on matters concerning the formulation of regional operational and capital improvement budgets, and the planning, construction, improvement, maintenance, and operation of public health facilities within its respective jurisdiction and shall sit in an advisory capacity to the governor on matters concerning the nominees for positions on the corporation board. Nothing in this section shall be construed as precluding or preventing the committees from coordinating their efforts and activities with the facility administrators within their counties.

(c) Each regional committee may prepare a report for inclusion with the corporation's annual report and audit, which shall include but not be limited to comments and analyses on the corporation's regional operational and capital improvement budgets for its respective region.

(d) Upon the establishment of a regional system board for a regional system pursuant to section 323F-3.5, this section shall no longer apply to that regional system. [L 1996, c 262, pt of §2; am L 1998, c 229, §8; am L 2007, c 290, §26]

" **§323F-10.5 Executive public health facility management advisory committee; establishment.** (a) There is established within the corporation an executive public health facility management advisory committee to consist of the chairpersons of each of the five regional public health facility management advisory committees. The executive committee shall, through its chairperson, represent the interests of all regional committees on the corporation board.

(b) The executive committee shall select its own chairperson to serve on the corporation board and shall adopt rules governing the terms of office and removal from the corporation board. The executive committee shall also adopt rules governing the terms of office for each of the five regional committee chairpersons. The executive committee may

also adopt other rules as it may consider necessary for the conduct of its business.

(c) The members of the executive committee shall serve without compensation, but shall be reimbursed for reasonable expenses incurred in the performance of their duties.

(d) Upon the establishment of a regional system board for a regional system pursuant to section 323F-3.5, this section shall no longer apply to that regional system. [L 1998, c 229, pt of §1; am L 2007, c 290, §27]

" **§323F-10.6 Peer review and credentialing.** Peer review activities shall be subject to chapters 663 and 671D and all other provisions and restrictions of medical peer review committees established by state law. [L 1998, c 229, pt of §1; am L 2007, c 290, §28]

" **§323F-11 Executive branch; noninterference.** Notwithstanding any other law to the contrary, the governor and executive branch agencies shall limit their responsibilities to that of review and oversight when the corporation or regional system board receives general funds from the State to subsidize the operating budgets of deficit facilities. The governor and executive branch agencies shall not interfere with the systemic change, capacity building, advocacy, budget, personnel, system plan development, or plan implementation activities of the corporation or any regional system board. The governor and executive branch agencies shall not interfere with the ability of the corporation or regional system board to function as a multiple facility public hospital system delivering health care services to the residents of the State. [L 1996, c 262, pt of §2; am L 2007, c 290, §29]

" **[§323F-12] Public-private partnership.** (a) There is established within the corporation for administrative purposes only a public-private partnership in a county that encompasses at least three islands inhabited by permanent residents, to research, develop, and implement a model of health care delivery that addresses the coordination of care across the spectrum of care from acute, to skilled nursing facility, to home, in a manner that is seamless, efficient, appropriate, and cost-effective.

(b) The public-private partnership shall:

- (1) Work to resolve the challenges in the post-acute care environment;
- (2) Expand inpatient capacity;
- (3) Improve access to and quality of health care; and

- (4) Enhance the operational and financial viability of public and private health care providers at all levels of care.
- (c) The public-private partnership shall be mutually beneficial to stakeholders and consumers and shall be based upon the following:
 - (1) Short-term goals:
 - (A) Provide a mechanism to move waitlisted patients to an appropriate long-term care setting;
 - (B) Provide appropriate financial support to allow for the movement of patients along the continuum of care, regardless of the ability to pay;
 - (C) Maintain the financial viability of skilled nursing facilities by providing adequate funding from all sources; and
 - (D) Maintain the financial viability of full-service acute care facilities by reducing the number of waitlisted patients.
 - (2) Long-term goals:
 - (A) Improve the continuity of care and efficiency between providers;
 - (B) Enhance the quality of patient care;
 - (C) Create a patient-centered health care infrastructure;
 - (D) Maximize capacity and increase operational and financial viability among network organizations;
 - (E) Optimize existing resources to maximize return;
 - (F) Facilitate the transition of care between different levels of care;
 - (G) Reduce unnecessary transfers of patients and attract medically appropriate transfers from neighboring islands;
 - (H) Create reimbursement mechanisms that support integrated efforts;
 - (I) Reduce unnecessary health care use and prevent unnecessary hospitalizations and readmissions; and
 - (J) Expand access to specialty services to counties that encompass at least three islands inhabited by permanent residents. [L 2012, c 279, §2]

"PART II. BUDGET AND FINANCE

§323F-21 Fiscal provisions. (a) There is created in the state treasury a special fund to be known as the health systems special fund, into which shall be deposited all fees, proceeds, reimbursements, and the like owed to or received by the

corporation, any regional system board, and its facilities, except as herein provided. There shall be established within the special fund regional subaccounts for each regional system board upon its establishment. The special fund and the regional subaccounts shall be used solely to fulfill the purposes outlined in this chapter.

The corporation and each regional system board may establish and maintain, within the health systems special fund or any regional subaccount, any other accounts that may be necessary and appropriate to carry out its purposes and responsibilities.

The corporation and any regional system board may deposit moneys into trustee accounts for the purposes of securing or issuing bonds.

The corporation and regional system boards may provide reasonable reserves for any of the following purposes:

- (1) Insurance deductibles;
- (2) The improvement, replacement, or expansion of their facilities or services;
- (3) The securing of the corporation's or regional system boards' bonds, notes, or other instruments of indebtedness; or
- (4) Any other purpose the corporation or the regional system boards deem necessary or appropriate in the performance of their purposes and responsibilities.

(b) The corporation board and regional system boards shall collaboratively develop budgetary guidelines and annual operating and capital budgets for each facility, taking into account anticipated surpluses from or subsidies to the facilities pursuant to the annual guidelines described in this section, accumulated corporation and regional reserves and accounts, subsidies, if any, that are determined to be needed from the general fund, and other sources of corporation-wide and regional income as may be identified. Two-year budgets will be approved for regional system boards, in alignment with State of Hawaii biennium budgeting. The corporate board shall not alter the two-year budget of a regional system except:

- (1) Where state general funding is reduced;
- (2) An emergency exists; or
- (3) There is a renegotiated budget approved by a regional system board.

The corporation and regional system boards shall collaboratively develop budgetary guidelines and negotiate with each facility reasonable corporation administrative costs, including funds determined by the corporation or any regional system board to be needed from or provided to each facility to:

- (1) Repay corporation or regional system board debts;

- (2) Provide subsidies to any facility determined to be unable to fund from within that facility's programs and services deemed essential to community needs; and
- (3) Maintain appropriate reserves.

(c) The corporation and regional system boards shall collaboratively develop annual corporation operating and capital budgets, taking into account anticipated surpluses from or subsidies to the facilities pursuant to the annual guidelines described in this section, accumulated corporation and regional system board reserves and accounts, subsidies, if any, that are determined to be needed from the general fund, and other sources of corporation-wide and regional system board income as may be identified.

(d) Beginning with the first of the legislative biennium budget years following the establishment of a regional system board, and for each biennium period thereafter, the corporation shall call together all the regional systems through representatives selected by each regional system board, and the chairs of the facility management advisory committees, if any, to determine which services and functions should be provided by the corporation for the next biennium budget period, consistent with this chapter. As part of the biennium budgeting process, the corporation board and the representatives of each regional system, working through the corporation board regional representatives, shall agree upon an allocation methodology for funding the agreed upon and statutorily created corporate services and functions.

(e) The corporation may share in any facility's surplus and may offset any facility's deficits as provided herein. Any regional system board shall share in the surplus of any facility within the regional system and shall offset any facility deficits within its regional system. Operating surpluses of the regional system board shall be reinvested in the operations of that regional system in any prudent manner; provided that upon request, and subject to authorization by the regional system board, the regional system board may share its surplus or resources with a facility outside of the regional system to benefit the corporation-wide system of health care. Obligations undertaken by a facility shall be paid only from funds of that facility, unless the corporation board, the regional system board managing the facility, or an authorized agent explicitly agrees to guarantee the obligation. Loans and other transfers may be made between regional systems upon approval of the affected regional system boards to assist in the cash flow and operations of the public health facilities.

(f) In accordance with each annual facility budget, and subject to policies established by the corporation board and by

each regional system board, each facility of the corporation and regional system board, respectively, shall:

- (1) Bill and collect for its services;
- (2) Maintain bank accounts; and
- (3) Pay for needed personnel, supplies, equipment, and other operational and capital expenditures.

(g) The corporation and each regional system board, subject to policies established by the corporation and each regional system board, respectively, may elect to manage its own capital improvement project and funds, either directly or indirectly by contract; provided that annual reports of the project moneys are provided to the governor and legislature.

(h) The corporation board and regional system boards may hold public informational meetings on their budgets. Representatives of any county government, state government, or any other person having an interest in the budget, shall have the right to be heard at the meetings. [L 1996, c 262, pt of §2; am L 2007, c 290, §30]

" **§323F-22 Annual audit and report; disclosure of revenue projections; internal performance audit.** (a) The corporation shall engage a certified public accountant to conduct an annual audit of its financial affairs, books, and records in accordance with generally accepted accounting principles. The corporation, in consultation with a regional system board, may permit or require a regional system board to retain an audit firm to conduct an independent audit of the regional system. Each regional system board shall submit the results of the annual audit to the corporation board within one hundred twenty days after the close of the regional system board's fiscal year. The corporation shall submit to the governor and the legislature, within one hundred fifty days after the close of the corporation's fiscal year, a report that shall include the audited financial report for that fiscal year for the corporation and each regional system board.

(b) In addition to the submittal of the audit required under subsection (a), the corporation, in cooperation with the regional system boards, shall submit a report to the legislature at least twenty days prior to the convening of each regular session that shall include but not be limited to:

- (1) The projected revenues for each health care facility;
- (2) A list of all proposed capital improvement projects planned for implementation during the following fiscal year; and
- (3) All reports submitted by regional public health facility management advisory committees pursuant to section 323F-10(c).

(c) The regional system boards shall prepare a report for inclusion with the corporation's annual report and audit.

(d) There shall be an annual internal audit of the management and operations of the corporation and regions. The corporation, in cooperation with the regional system boards, shall submit a report to the legislature at least twenty days prior to the convening of each regular session on the results of the annual internal audit of the management and operations of the corporation and regions. [L 1996, c 262, pt of §2; am L 2007, c 290, §31; am L 2009, c 182, §15]

" **§323F-23 Exemption from taxation.** The corporation and each regional system board shall be exempt from paying any:

- (1) Assessments levied by any county; and
- (2) State taxes of any kind. [L 1996, c 262, pt of §2; am L 2007, c 290, §32]

" **§323F-24 Budget oversight.** The corporation's and each regional system board's operating and capital improvement budgets shall not be subject to review or approval by the governor or any state agency, except where state general funds or capital improvement moneys are requested. If general funds or capital improvement moneys are requested, then the corporation or any regional system board shall include, with its request, the proposed budget for which the funds or moneys are to be included. The corporation and regional system boards, once operational, shall collaboratively submit their budgets annually to the legislature for review and approval at least twenty days prior to the convening of the regular legislative session, beginning with the budgets for the 2010-2011 biennium fiscal years. [L 1996, c 262, pt of §2; am L 2007, c 290, §33]

" **[§323F-25] Regional system board; community hospitals; community health centers; collaboration.** Each regional system board and each community hospital under the jurisdiction of the corporation shall collaborate with community health centers within their respective geographic jurisdictions to maximize funding from the state and federal governments to:

- (1) Maximize reimbursement for health care services provided;
- (2) Acquire funds for capital investment;
- (3) Provide expanded hours of service; and
- (4) Ensure the provision of the appropriate level of care to the community served by each community health center. [L 2009, c 182, pt of §8]

"PART III. OTHER PROVISIONS

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

- (1) An initial determination is made by the regional chief executive officer as to critical and emergency services which shall not be subject to reduction or elimination pursuant to this section;
- (2) The plan of the facility to substantially reduce or eliminate any direct patient care services at the health facility shall first be presented to the regional system board for its approval;
- (3) Subsequent to the requisite regional system board approval, the regional chief executive officer shall present the plan to the community in which the facility is located, at a community informational meeting, in order to obtain community input on the plan; and
- (4) Provided that if the regional system board approves the plan, the plan as approved by the regional system board shall be submitted to the corporation board for ratification.

(b) After the community informational meeting, but at least twenty days prior to the implementation of the plan approved by the regional system board, the regional system board shall give notice of implementation of the plan to the governor, senate president, and the speaker of the house of representatives.

(c) The decision of the regional system board shall be the final decision with respect to the plan. Implementation of the plan shall commence and continue, provided that no legislation is enacted that:

- (1) Requires the reinstatement and continuation of the direct patient care services that are subject to reduction or elimination under the plan; and
- (2) Includes an appropriation of additional moneys sufficient to adequately fund the mandated reinstatement and continuation of the subject direct patient care services. [L 1996, c 262, pt of §2; am L 2007, c 290, §34; am L 2009, c 182, §2]

" **[§323F-32] Acquisition of Kahuku hospital.** (a) Kahuku hospital on Oahu may be assimilated into the Hawaii health systems corporation in a manner and to an extent that may be negotiated between the corporation and Kahuku hospital. After assimilation, the physical assets and the ground lease of Kahuku

hospital shall become the property of the corporation, and Kahuku hospital shall be operated by the corporation.

(b) None of the liabilities of Kahuku hospital shall become liabilities of the corporation.

(c) The corporation, at its discretion, may retain any or all medical and nonmedical employees of Kahuku hospital.

(d) The corporation, without regard to section 323F-31, may adjust the levels of services provided by Kahuku hospital.

(e) Kahuku hospital shall be exempt from chapter 102 and section 103-53, and its board of directors, if any, shall be exempt from part I of chapter 92.

(f) The purchase of goods and services by or on behalf of Kahuku hospital shall be exempt from chapters 103D and 103F.

(g) Employees of Kahuku hospital shall be exempt from chapters 76, 87A, 88, and 89, and shall not be considered as employees of the State. [L 2007, c 113, §2]

" **[§323F-33] Hawaii Medical Center-East; affiliation; acquisition.** (a) Hawaii Medical Center-East on Oahu may be assimilated into the corporation by negotiation between the corporation and the owners of Hawaii Medical Center-East. Assimilation may be accomplished with the creation of a new entity, a partnership, a long-term lease, or any other vehicle determined to be in the best interests of the public by the corporation board and as negotiated with the owners of Hawaii Medical Center-East. After assimilation, Hawaii Medical Center-East shall be operated by the corporation, either directly, through contractors, or through a subsidiary.

(b) None of the liabilities of Hawaii Medical Center-East shall become liabilities of the corporation.

(c) Hawaii Medical Center-East, once assimilated, shall be exempt from chapter 102 and section 103-53, and its board of directors, if any, shall be exempt from part I of chapter 92.

(d) The purchase of goods and services by or on behalf of Hawaii Medical Center-East, after assimilation, shall be exempt from chapters 103D and 103F.

(e) Assimilation of Hawaii Medical Center-East into the Hawaii health systems corporation shall be exempt from part VII of chapter 323D.

(f) As used in this section, "Hawaii Medical Center-East" means the facility previously known as Hawaii Medical Center-East located on Liliha street on the island of Oahu. [L 2012, c 281, §2]

" **[§323F-34] Tobacco and electronic smoking devices use prohibited.** (a) Notwithstanding the less restrictive requirements of chapter 328J, the Hawaii health systems

corporation shall prohibit the use of any tobacco product or electronic smoking device by any person on the premises of all facilities operated by the corporation within the State, to the extent not prohibited by federal law and regulation.

(b) Pursuant to section 89-9(d), the tobacco and electronic smoking device use prohibitions under this section shall not be subject to collective bargaining.

(c) The corporation shall prominently display signs stating that "tobacco and electronic smoking device use is prohibited" at all entrances to the corporation's health facilities and at other conspicuous locations throughout the outdoor premises of each health facility.

(d) For the purposes of this section:

"Electronic smoking device" means any electronic product that can be used to aerosolize and deliver nicotine or other substances to the person inhaling from the device, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, hookah pipe, or hookah pen, and any cartridge or other component of the device or related product, whether or not sold separately.

"Premises" means all indoor and outdoor areas within the state-designated property boundary lines of each of the corporation's health facilities and shall include all employee and visitor parking lots.

"Tobacco or electronic smoking device use" does not include mere possession or storage of the same for use in locations outside the premises of the corporation's health facilities.

"Tobacco product" means any product made or derived from tobacco that contains nicotine or other substances, and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested by any other means, including, but not limited to, a cigarette, cigar, pipe tobacco, chewing tobacco, snuff, snus, or an electronic smoking device. "Tobacco product" does not include drugs, devices, or combination products approved for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.
[L 2016, c 25, §2]

**"[PART IV.] PUBLIC-PRIVATE PARTNERSHIPS FOR THE DELIVERY OF
HEALTH CARE SERVICES AT MAUI REGIONAL SYSTEM FACILITIES**

Note

Governor to inform the president of the senate and the speaker of the house of representatives of transfer completion dates. L 2015, c 103, §4.

Cross References

Separation benefits for Hawaii health systems corporation employees, see chapter 89E.

[§323F-51] Definitions. As used in this part:

"Nonprofit management entity" means a nonprofit organization duly authorized to transact business in the State, the sole shareholder or member of which is the private entity, whose principal purpose is to manage and operate a medical care facility.

"Pre-transfer facility" means a facility of the Maui regional system prior to its transformation into a transferred facility.

"Private entity" means a business organization duly authorized to transact business in the State that:

- (1) Has a certificate of need to operate one or more licensed hospitals in the State obtained from the state health planning and development agency pursuant to part V of chapter 323D; or
- (2) Is the sole member of a nonprofit management entity or hospital that has a certificate of need to operate one or more licensed hospitals in the State obtained from the state health planning and development agency pursuant to part V of chapter 323D.

"Transfer completion date" means the date specified as the transfer completion date in an agreement entered into pursuant to section 323F-52, including any extensions allowed under the terms of such agreement.

"Transferred facility" means a medical facility of the Maui regional system for which the right and responsibility to manage, operate, and otherwise provide health care services at the facility is transferred to a private entity or its nonprofit management entity pursuant to this part. [L 2015, c 103, pt of §2]

" **[§323F-52] Transfer of right and responsibility to manage, operate, and provide health care services in a facility of the Maui regional system to a nonprofit management entity.** (a) Notwithstanding any other law to the contrary, including but not limited to section 27-1, section 76-16(b) and other sections of chapter 76, chapters 78, 89, 89A, 89C, and 171, part V of chapter 323D, and sections 323F-11 and 323F-31, the governor, with the assistance of the chief executive officer of the corporation, and the regional chief executive officer of the Maui regional system, or their designees, shall negotiate with a

private entity to transfer the right and responsibility to manage, operate and otherwise provide health care services at one or more facilities of the Maui regional system, including Maui memorial medical center, Kula hospital and clinic, and Lanai community hospital, to a nonprofit management entity wholly-owned by the private entity; provided that the private entity submitted a statement of interest in response to a notice published in accordance with section 1-28.5 by the Maui regional system board, inviting private entities to submit statements of interest in acquiring the right and responsibility to manage, operate and otherwise provide health care services in one or more of the Maui regional system's facilities.

(b) Any agreement negotiated by the governor and entered into by the private entity and the governor, the corporation board, and the Maui regional system board, shall, at minimum, include a transfer completion date and a plan and schedule for completing the transfer that includes:

- (1) Provisions and deadlines for conducting and completing due diligence;
- (2) Provisions and a deadline to terminate the agreement before a transfer is completed, at the parties' respective option;
- (3) Provisions for winding-down operations at the transferred facility or facilities and for terminating the agreement in the event that the lease entered into pursuant to section 323F-54 is terminated before the lease expires or the private entity or its nonprofit management entity abandons or otherwise discontinues its provision of health care services in a transferred facility; and
- (4) Provisions to transfer or assign interests in equipment and furnishings, including any leases for the same; accounts receivable; medicare and other provider agreements; business and commercial licenses and registrations; intellectual property and goodwill; administrative, financial, and medical records and information; or any other interests or property of the Maui regional system facility or facilities to be transferred under this part, that the parties agree to transfer or assign.

(c) On and after the transfer completion date for the transfer of one or more facilities of the Maui regional system to a private entity or its nonprofit management entity pursuant to this part, the State, the corporation, and the Maui regional system and its board shall cease to have any responsibility for or control over the management and operation of the facility or

facilities transferred by the agreement pursuant to this part.
[L 2015, c 103, pt of §2]

" **[\$323F-53] Approvals required.** Any documents associated with the transfer of a Maui regional facility or facilities under this part shall be subject to review by the attorney general and the director of finance in their capacity to advise the governor. [L 2015, c 103, pt of §2]

" **[\$323F-54] Real property; terms and conditions.** (a) The corporation shall enter into a fixed-term lease with the private entity or its nonprofit management entity to rent the real property, including all improvements and fixtures on the property, of the Maui regional system facility or facilities that is to be transferred to the private entity or its nonprofit management entity under this part.

(b) At minimum, the lease shall include the following terms and conditions:

- (1) The lease shall not be terminated other than for good cause and upon a minimum of three hundred sixty-five days prior written notice to ensure that the delivery of health care services to the community served will not be disrupted;
- (2) During the term of the lease, the private entity or its nonprofit management entity shall have exclusive control of all matters related to the management, operation, and provision of health care services in the leased facilities, except as otherwise set forth in the lease;
- (3) The responsibility to oversee the performance of the terms and conditions of the lease by the private entity or its nonprofit management entity shall rest with the Maui regional system board as the custodial caretaker of the real property under section 323F-3.5; and
- (4) The corporation or the State shall retain ownership of the leased property throughout the term of the lease.

[L 2015, c 103, pt of §2]

" **[\$323F-55] Transfer or assignment of other business assets.** Provisions to transfer ownership or assign the interest of the corporation or the Maui regional system in some or all of the equipment and furnishings of the facility or facilities transferred to the private entity or its nonprofit management entity under this part shall be included in the lease entered into under section 323F-54. [L 2015, c 103, pt of §2]

" **[§323F-56] Liabilities.** (a) The State, the Maui regional system board, or the corporation, separately or collectively, shall be responsible for any and all obligations incurred by the facility or facilities to be transferred, the Maui regional system, or the corporation prior to the transfer completion date including any accounts payable, accrued paid time off, debt, capital leases, malpractice liabilities, and other obligations incurred before the transfer completion date. Any and all liabilities of the pre-transfer facility that were transferred to the corporation upon its creation by Act 262, Session Laws of Hawaii 1996, all liabilities of the pre-transfer facility related to collective bargaining contracts negotiated by the State, and the liability for all current outstanding post-employment benefits of the regional system or the corporation shall remain the responsibility of the State.

(b) All liabilities arising out of a transferred facility's management and operation in a transferred facility, on or after the transfer completion date, shall be the responsibility of the private entity or its nonprofit management entity. [L 2015, c 103, pt of §2]

" **[§323F-57] Employment, wages, and benefits.** (a) The corporation and the unions representing employees of the facility or facilities shall meet to discuss the impact of a transfer on the employees and the feasibility of tempering the adverse effect of layoffs by amending the employees' collective bargaining agreements pursuant to section 89-8.5.

(b) The employees working at a transferred facility shall be subject to laws and regulations that apply to private sector employees. The employees of a private entity or its nonprofit management entity shall not be governed by state laws that apply to public officers and employees of the State including but not limited to section 76-16(b) and all other sections of chapter 76, chapters 89, 89A, and 89C, and any other laws and regulations that govern public or government employment in the State.

(c) The private entity or its nonprofit management entity shall offer all employees of the pre-transfer facility, employment for a period of no less than six months after the transfer completion date.

(d) No employee of the corporation who is separated from service as a result of implementation of an agreement and transfer under this part shall suffer any loss of any previously earned rights, benefits or privileges.

(e) Subject to subsection (c), the private entity or its nonprofit management entity shall take all reasonable steps necessary to provide for a smooth transition of employees from

state employment to private employment by the private entity or its nonprofit management entity at a transferred facility. [L 2015, c 103, pt of §2]

" **[§323F-58] Operating support.** (a) Without regard to chapter 42F, the private entity or its nonprofit management entity to which one or more of the facilities of the Maui regional system has been transferred pursuant to this part may seek funds from the State for its operating costs, as defined in section 37-62, of a transferred facility by preparing a budgetary request in accordance with procedures and criteria established by the director of finance. In no event shall the amount requested exceed the amount appropriated for the operating costs of the Maui regional system for the 2014 fiscal year. The director of finance shall review the request and may include some or all of the amount requested in the executive budget of the department of health. Any appropriation made in response to the request shall be subject to the allotment system generally applicable to all appropriations made by the legislature. The department of health shall be responsible for transferring the funds allotted to the private entity or its nonprofit management entity for expenditure.

(b) To qualify to request funds from the State under this section, the private entity or its nonprofit management entity to which one or more of the facilities of the Maui regional system has been transferred pursuant to this part shall satisfy the following standards and conditions:

- (1) Be duly authorized to transact business in the State, and determined and designated to be a nonprofit organization by the Internal Revenue Service;
- (2) Be licensed and accredited, in accordance with federal, state, or county statutes, rules, or ordinances, to conduct the activities for which funding is sought;
- (3) Have a governing board whose members have no material conflict of interest and serve without compensation;
- (4) Have bylaws or policies that describe the manner in which business is conducted, prohibit nepotism, and provide for the management of potential conflict of interest situations;
- (5) Be in compliance with all of the requirements of chapter 323D with respect to the transferred facility and any other health care facility it operates;
- (6) Submit tax clearances from the director of taxation and the Internal Revenue Service to the effect that all tax returns due have been filed and all taxes,

interest, and penalties levied or accrued against have been paid;

- (7) Submit to an annual audit, disclose revenue projections, and prepare an annual internal performance audit and itemized financial statements, including reimbursement rates, with respect to the transferred facility, to the extent practicable, in the same manner as described in section 323F-22; and
- (8) Submit its annual budget with respect to a transferred facility to the legislature for review at least twenty days prior to the convening of the regular legislative session. [L 2015, c 103, pt of §2]

" **[§323F-59] Capital project support.** (a) Without regard to chapter 42F, the private entity or its nonprofit management entity to which one or more of the facilities of the Maui regional system has been transferred pursuant to this part may seek funds from the State for capital expenditures, as that term is defined in section 37-62, for a transferred facility for each or all of the first ten years of the lease entered into under section 323F-54. Each year's request for funds shall be submitted to the director of finance in accordance with procedures and criteria established by the director and shall be reviewed by the director and comptroller with pertinent capital planning and expenditure documents and the capital planning procedures supplied by the private entity or its nonprofit management entity. The director of finance may include some or all of the funds requested in the executive budget of the department of health. Any appropriation made in response to a request shall be subject to the allotment system generally applicable to all appropriations made by the legislature. The department of health shall be responsible for transferring the funds allotted to the private entity or its nonprofit management entity for expenditure.

(b) After the first ten years of the lease entered into under section 323F-54, the nonprofit management entity and the private entity shall be responsible for funding all capital expenditures of the transferred facility.

(c) To qualify to request funds from the State under this section, the private entity or its nonprofit management entity shall satisfy all of the standards and conditions set out in section 323F-58(b). In addition, the transferred facility shall demonstrate that the capital projects constructed, operated, and maintained with the requested funds will be in compliance with all federal, state, and county health care planning laws and rules, land use and zoning laws and rules, environmental laws

and rules, and building and health codes, rules, and regulations. [L 2015, c 103, pt of §2]

" **[§323F-60] Strategic commitment during term of lease.** (a) The private entity shall be committed to supporting the nonprofit management entity and any transferred facility to achieve excellence and improve access to services in Maui county.

(b) The private entity and the nonprofit management entity shall establish a governance and management structure for a transferred facility that seeks to improve its performance. The private entity and the nonprofit management entity shall apply efficiencies of scale, consolidation of shared services, and administrative and technological expertise to improve the health care performance of a transferred facility.

(c) The private entity and the nonprofit management entity shall support a transferred facility in:

- (1) Expanding primary care access throughout Maui;
- (2) Recruiting and rotating specialists to fill current service gaps;
- (3) Extending the private entity or its nonprofit management entity's service line coordination to Maui, including but not limited to cancer, cardiology, orthopedics, mental health, pediatrics, and women's health services;
- (4) Coordinating long-term care patients and reducing wait lists;
- (5) Upgrading facilities and equipment as needed to provide high quality care and to enhance patient experience; and
- (6) Incorporating the Maui region into the private entity or its nonprofit management entity's value-based contracting initiatives to better align quality and cost initiatives. [L 2015, c 103, pt of §2]