

HB 694



**TESTIMONY OF THE STATE ATTORNEY GENERAL
TWENTY-FIFTH LEGISLATURE, 2009**

ON THE FOLLOWING MEASURE:

H.B. NO. 694, S.D. 1, RELATING TO THE HAWAII HEALTH SYSTEMS CORPORATION.

BEFORE THE:

SENATE COMMITTEE ON WAYS AND MEANS

DATE: Monday, April 6, 2009 **TIME:** 9:30 AM

LOCATION: State Capitol, Room 211

TESTIFIER(S): WRITTEN TESTIMONY ONLY
(For more information, call Andrea Armitage,
Deputy Attorney General, at 587-3050.)

Chair Kim and Members of the Committee:

The Department of the Attorney General provides these comments regarding potential legal problems with this bill.

The purpose of this bill is to make changes to the laws that affect the Hawaii Health Systems Corporation (HHSC) and the regional system boards and their facilities to ensure the public facilities' viability. This is an omnibus bill that contains a number of changes to the law, including but not limited to:

(1) Modifying the law that requires legislative approval for HHSC facilities to reduce services by creating a different process that does not require legislative approval;

(2) Requiring the Department of Health to assume all liabilities and debts of HHSC incurred before HHSC was formed in 1996, and clarifying that HHSC is responsible for all liabilities incurred after that date. It also clarifies that HHSC shall bear sole responsibility for making all payments into the Employees' Retirement System beginning July 1, 1996;

(3) Requiring nongovernmental healthcare payors to pay critical access hospitals and federally qualified health centers consistent with

the Medicare reimbursement rate and with the Medicaid reimbursement rate, respectively;

(4) Allowing HHSC and the regional system boards to negotiate their own memoranda of understanding for their employees with the appropriate bargaining unit negotiators;

(5) Allowing HHSC and regional systems to conduct criminal history record checks on employees;

(6) Allowing the regional system or individual facilities to transition into new legal entities; and

(7) Requiring each regional system board and each community hospital under the jurisdiction of HHSC to collaborate with community health centers in their regions to maximize funding from the state and federal governments.

There are a number of legal concerns with this bill. First, part III, sections 7 through 10, of the bill amends chapter 431, article 10A; chapter 432, article 1; chapter 432, article 2; and chapter 432D of the Hawaii Revised Statutes (HRS), by requiring nongovernmental healthcare payors to pay critical access hospitals and federally qualified health centers consistent with the Medicare reimbursement rate and with the Medicaid reimbursement rate, respectively. This part of the bill appears to violate article III, section 14, of the Hawaii Constitution. That section requires each bill to include only one subject, which is to be expressed in its title. The title of this bill is "Relating to the Hawaii Health Systems Corporation." Part III changes the reimbursement rate for all critical access hospitals and federally qualified health centers, not just those owned by HHSC or its regional systems. Therefore, this section is unconstitutional within this measure.

However, there is one bill that crossed over to the House that includes similar provisions as part III of this bill, but has a title that encompasses this particular subject. It is Senate Bill No. 1140, S.D. 2, H.D. 2, Relating to Health Care. Therefore, removing part III, sections 7 through 10, from this measure in order to comply with

article III, section 14, of the Hawaii Constitution will not stop changes to the reimbursement rates as long as S.B. No. 1140, S.D. 2, H.D. 2, passes.

Second, on page 29, lines 15 - 20, the bill provides that "[n]otwithstanding any law to the contrary, including but not limited to section 27-1, and chapter 171 [HRS], any of the regional systems or individual facilities of the Hawaii health systems corporation is hereby authorized to transition into a new legal entity" Section 27-1(3), HRS, provides that state functions include "[p]lanning, construction, improvement, maintenance, and operation of public hospitals and other public health and medical facilities." Considering the specificity of this provision, it would be prudent to also amend section 27-1, HRS, to allow facilities of the HHSC to transition from state facilities to private legal entities.

Third, on page 30, line 1, the bill states that the regional system or facility may transition into a "municipal facility." The term "municipal facility" is not defined in this bill or in the Hawaii Revised Statutes. Its meaning is unclear.

Fourth, on page 30, line 22, and page 31, lines 1 - 3, the bill states that "all liabilities of the regional system or facility related to collective bargaining contracts negotiated by the State, shall become the responsibility of the State[.]" This provision requires clarification as to what liabilities are included in this obligation; i.e., whether this provision makes the State liable for all of the collective bargaining liabilities of the regional system or facility without condition, or whether it refers to specific liabilities.

Fifth, on page 31, line 4, the proposed bill states that funding and other provisions of the chapter shall continue during "the period of transition[.]" The phrase "period of transition" is not defined. There should be an explanation as to when the period of transition begins and when it ends.

Sixth, on page 31, lines 5 - 7, the bill states that during the period of transition, "the State shall continue to fund the provision

of health care services provided for by the regional system or individual facility[.]” The meaning of this provision is unclear. Currently regional systems and individual facilities are supported through their own funding mechanisms, and the Legislature may, of course, decide to make specific appropriations. This provision in the bill should make clear that it does not create any new financial obligation for the State to fund services provided by the regional systems or individual facilities.

Finally, section 15 would authorize any of the regional systems or individual facilities of HHSC to transition into a new legal entity. There are a number of issues that may be involved with a “transition” to another legal entity that are not clearly addressed by this measure. For example, what happens to the state employees if a facility “transitions” into another legal entity? If this bill is passed, we recommend that the impact of section 15, including personnel issues, be addressed.

HMSA



An Independent Licensee of the Blue Cross and Blue Shield Association

April 6, 2009

The Honorable Donna Mercado Kim, Chair
The Honorable Shan S. Tsutsui, Vice Chair

Senate Committee on Ways and Means

Re: HB 694 SD1 – Relating to the Hawaii Health Systems Corporation

Dear Chair Kim, Vice Chair Tsutsui and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to provide comments in opposition to SB 694 SD1 Part III. Part III of this measure will require health plans to pay Critical Access Hospitals (CAH) no less than 101% of costs for services and Federally Qualified Health Centers (FQHC) at rates considerably higher than independent practicing physicians.

HMSA values the inclusion of both CAHs and FQHCs in both our government programs and private networks. This bill, however, would favor these facilities over all other existing health care resources thereby creating an inequity in the way we manage our network relationships. Several issues in particular are noted below:

Self-Reporting of Costs

The bill mandates health plans reimburse CAHs for their costs that are self-reported. The measure contains no quality control or standardization criteria to verify that costs being reported by each facility are appropriate and in-line with other similarly situated health care facilities in the community.

Inequity of Payments

For a health plan to pay a CAH or an FQHC at a reimbursement rate that is greater than that of any other nearby health care provider is difficult, if not impossible, to justify to the greater provider community. These facilities are providing the same basic services to our members regardless of the government's designation of a CAH or FQHC.

The point has been made that the FQHCs are providing more services than an individual may typically be able to receive at a physician's office. While this may be the case under programs such as QUEST and Medicaid, it's important to note that such services are not included in HMSA's private business health plans. When FQHCs provide services to HMSA's private plan members for benefits which are not covered under the individual's plan we do not believe that employers should have to pay additional costs since these are not plan benefits. For example, if an HMSA private plan member were to visit their physician's office and the physician had arranged transportation for the member to visit a specialist, HMSA would not cover that cost. Under this bill, if that same member visited an FQHC, HMSA would be forced to pay for this service.

Finally we would like to reiterate a point made by the Attorney General's Office (AG) during prior hearings on this measure that the inclusion of the language contained in Part III of this measure concerning CAHs and FQHCs could violate the constitutional requirement that a bill's contents must be expressed in its title. As the AG's office points out, not all CAHs are included under Hawaii Health System Corporation (HHSC). Molokai General Hospital is a designated CAH not operated by HHSC but rather by Queens' Medical Center. FQHCs are facilities that receive their designation through the Federal Government to provide services to underserved populations. These entities, while providing services which are closely aligned with those delivered by HHSC, are not affiliated in a fashion which would make their inclusion in Part III of this measure constitutionally sound. Given the issues with Part III's contents and the bill's title, we would respectfully request the removal of this section from SB 694 SD1.

Thank you for the opportunity to provide comments on SB 694 SD1.

Sincerely,

A handwritten signature in black ink, appearing to read 'JD', with a long horizontal stroke extending to the right.

Jennifer Diesman
Assistant Vice President
Government Relations



HAWAII HEALTH SYSTEMS
C O R P O R A T I O N

"Touching Lives Every Day"

The Senate
Committee on Ways and Means
Senator Donna Mercado Kim, Chair
Senator Shan T. Tsutsui, Vice Chair

Monday, April 6, 2009
9:30 a.m.
Conference Room 211
Hawaii State Capitol

Testimony for HB 694 SD1 Relating to Hawaii Health Systems Corporation

Authorizes a facility or regional health care system under the Hawaii Health Systems Corporation to transition into a new legal entity; amends the maintenance of services requirements; requires HHSC to assume liabilities and debts or other obligations accrued beginning on July 1, 1996; requires commercial health plans to provide a minimum reimbursement level; authorizes special negotiation authority for HHSC with bargaining units; authorizes criminal history record checks

By Thomas M. Driskill, Jr.
President and Chief Executive Officer
Hawaii Health Systems Corporation (HHSC)

On behalf of the Hawaii Health Systems Corporation (HHSC) Corporation Board of Directors, thank you for this opportunity to provide testimony in support of HB 694, SD1.

HB 694, SD1 provides the HHSC regions and facilities additional options to respond more effectively to the changing health care needs of their island communities. HB 694, SD1 seeks restructuring options that would enable HHSC regions and facilities to consider entering into various forms of public / private partnerships while at the same time remaining part of a system or a "federated" system of HHSC related healthcare facilities. Since we have taken the position that the State can no longer financially underwrite the escalating cost of healthcare for the communities we serve, it is essential that we look for new innovative ways to involve private partnerships in the provision of care.

The HHSC Corporate Board and corporate management are committed to working collaboratively with each of its five regions when they are ready to ensure a smooth transitioning process for any facility or regional restructuring that may be undertaken as a result of this Bill.

3675 KILAUEA AVENUE • HONOLULU, HAWAII 96816 • PHONE: (808) 733-4020 • FAX: (808) 733-4028

This measure addresses some of the key issues relating to organizational structure and financial conditions that present challenges to HHSC in operating the state authorized safety-net health care system and provide transitional opportunities to strengthen the regions' and facilities' ability to meet healthcare needs of the communities.

We support key provisions in this measure that include:

- Authorizing a facility or regional health care system to transition into a new legal entity
- Amending the maintenance of services requirements
- Requiring commercial health plans to provide minimum reimbursement level to critical access hospitals
- Authorizing negotiation for HHSC with bargaining units
- Authorizing criminal history record checks

While this legislation addresses restructuring options to facilitate public and private partnerships and it addresses reimbursement enhancements for critical access hospitals and federally qualified health centers, it still needs further work to finalize the type of new organization that HHSC facilities/regions could opt to formulate and once that decision is made, then there is a need to address in detail other associated laws that will require modification.

Your support for HB 694, SD1 is greatly appreciated. Thank you.



888 Mililani Street, Suite 601
Honolulu, Hawaii 96813-2991

Telephone: 808.543.0000
Facsimile: 808.528.4059

www.hgea.org

The Twenty Fifth Legislature, State of Hawaii
Hawaii State Senate
Committee on Ways and Means

Testimony by
Hawaii Government Employees Association
April 6, 2009

H.B. 694, S.D 1 – RELATING TO THE
HAWAII HEALTH SYSTEMS
CORPORATION

The Hawaii Government Employees Association opposes H.B. 694, SD. This bill authorizes any of the regional systems or individual facilities of the Hawaii Health Systems Corporation to transition into a new legal entity. It further allows the reduction of patient care services after presenting the plan first to the regional boards and subsequently to the community. It requires notification to the Senate President and House Speaker within twenty days of the reduction of services.

The Hawaii Health Systems Corporation provides the vital safety net of health care services to the citizens of Hawaii. It is critical that HHSC remain a viable health care system to ensure adequate health care is provided and available to the residents of the state.

We do agree that the Hawaii Health Systems Corporation should be required to bear the responsibility of making all appropriate employer payments into the Employees Retirement Systems under Chapter 88, HRS, beginning July 1, 1996.

Thank you for the opportunity to submit our comments on H.B. 694, S.D. 1.

Respectfully Submitted,

for Nora A. Nomura
Deputy Executive Director



April 6, 2009

The Honorable Donna Mercado Kim, Chair
The Honorable Shan S. Tsutsui, Vice Chair
Senate Committee on Ways and Means

Re: HB 694 SD1 – Relating to the Hawaii Health Systems Corporation

Dear Chair Kim, Vice Chair Tsutsui and Members of the Committee:

My name is Rick Jackson and I am President of the Hawaii Association of Health Plans (“HAHP”). HAHP is a non-profit organization consisting of seven (7) member organizations:

AlohaCare	MDX Hawai‘i
Hawaii Medical Assurance Association	University Health Alliance
HMSA	UnitedHealthcare
Hawaii-Western Management Group, Inc.	

Our mission is to promote initiatives aimed at improving the overall health of Hawaii. We are also active participants in the legislative process. Before providing any testimony at a Legislative hearing, all HAHP member organizations must be in unanimous agreement of the statement or position.

HAHP appreciates the opportunity to testify in opposition to Part III of HB 694 SD1 which would establish in statute a reimbursement level for private health plans to reimburse Critical Access Hospitals (CAHs) at no less than 101% of their self-reported costs and Federally Qualified Health Centers (FQHCs) at no less than their respective prospective payment system rates.

HAHP members agree with the federal government in its belief that CAHs and FQHCs provide vital services to segments of the community. In Hawaii, these facilities often provide services to QUEST and Medicaid populations who may have difficulty accessing health care in more traditional settings. That said, HAHP member organizations fundamentally disagree with the notion of setting reimbursement rates for providers of any type in employer sponsored health plans in Hawai‘i statute. We believe instead that rate negotiations which determine the cost of covered services in commercial insurance plans, which are in place today, are the appropriate method to deal with this subject.

Thank you for the opportunity to offer comments today.

Sincerely,

Rick Jackson
President

• AlohaCare • HMAA • HMSA • HWMG • MDX Hawaii • UHA • UnitedHealthcare •
HAHP c/o Howard Lee, UHA, 700 Bishop Street, Suite 300 Honolulu 96813
www.hahp.org