

**ACT 103**

H.B. NO. 1075

A Bill for an Act Relating to Health.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to ensure that the people presently served by the Maui regional system's health care facilities continue to have access to health care services in their communities by discontinuing the Maui regional system's direct delivery of those services and transferring one or more of the system's facilities to a private entity, or its wholly-owned nonprofit management entity, to instead deliver those services.

There is mounting evidence that making health care services available in the communities where the Hawaii health systems corporation presently serves requires more cost-effective use of the facilities. Discussions to date suggest that through their existing shared services, equipment, staffing, administrative and

technological experience and expertise, and economies of scale, private entities may be able to use the corporation's health care facilities more economically and efficiently.

In Act 182, Session Laws of Hawaii 2009, the legislature authorized any of the regional systems or individual facilities of the Hawaii health systems corporation to transition into a new legal entity in any form recognized under the laws of the State. With the approval and support of its regional system board, the Maui regional system actively explored the possibilities of a public-private partnership allowed under section 323F-7.6, Hawaii Revised Statutes, including undertaking three formal solicitation efforts to gauge the interest of potential private partners locally and nationally.

In the course of the Maui regional system's exploration of possible ventures with private partners, that regional system contacted over twenty companies that operate in Hawaii and elsewhere in the United States. In 2012, the Maui regional system submitted confidential information and memoranda describing the operational and financial landscape of its facilities to twelve different companies and contacted an additional eight entities to explore their interest in a possible partnership. Over the course of these explorations, the Maui regional system engaged in serious and robust discussions with at least six preliminarily interested parties.

During the course of those efforts, the Hawaii health systems corporation determined that the majority of potential partners are hesitant to evaluate partnership opportunities without enabling legislation that addresses certain structural issues related to such a transaction. In recent years, the only private entity outside Hawaii that was willing to invest resources to evaluate a partnership opportunity concurrently with the pursuit of enabling legislation eventually withdrew its interest when such legislation was not adopted. Since then, the Maui regional system has engaged in discussions with other private entities, including one private entity that has indicated its willingness to continue discussions concurrently with the pursuit of enabling legislation.

Accordingly, this Act provides more detailed authority for establishing public-private partnerships in the Maui regional system to use one or more of the system's facilities more cost-effectively by discontinuing the system's provision of health care services at one or more of those facilities and transferring the right and responsibility to manage, operate and provide health care services in those facilities to one or more private entities or their nonprofit management entities.

SECTION 2. Chapter 323F, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**“PART . PUBLIC-PRIVATE PARTNERSHIPS FOR THE DELIVERY  
OF HEALTH CARE SERVICES AT MAUI REGIONAL SYSTEM  
FACILITIES**

**§323F-A 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-B, 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.

**§323F-B 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-D 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.

**§323F-C 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.

**§323F-D 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.

**§323F-E 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-D.

**§323F-F 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.

**§323F-G 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.

**§323F-H 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.

**§323F-I 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-D. 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-D, 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-H(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.

**§323F-J 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 ad-

ministrative 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."

SECTION 3. Section 89-8.5, Hawaii Revised Statutes, is amended to read as follows:

**"§89-8.5<sup>1</sup> Negotiating authority; Hawaii health systems corporation.** Notwithstanding any law to the contrary, including section 89-6(d), the Hawaii health systems corporation or any of the regional boards, as a sole employer negotiator, may negotiate with the exclusive representative of any appropriate bargaining unit and execute memorandums of understanding for employees under its control to alter any existing or new collective bargaining agreement on any item or items subject to section 89-9[.]; provided that an alteration that intrudes beyond the jurisdiction of the Hawaii health systems corporation shall be effective only if the employer of the governmental jurisdiction intruded upon consents to the alteration in writing."<sup>2</sup>

SECTION 4. The governor shall inform the president of the senate and the speaker of the house of representatives of the transfer completion date specified in each agreement negotiated and entered into pursuant to chapter 323F, part , Hawaii Revised Statutes, by sending the president and the speaker each a copy of each fully executed agreement.

SECTION 5. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval; provided that the amendment made to section 89-8.5, Hawaii Revised Statutes, in section 3 of this Act shall be repealed one year after the transfer completion date specified in an agreement negotiated and entered into under chapter 323F, part , Hawaii Revised Statutes, and section 89-8.5, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day prior to the effective date of this Act.

(Approved June 10, 2015.)

**Notes**

1. Prior to amendment brackets appeared around section number.
2. Period should be underscored.