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EXECUTIVE CHAMBERS
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Written testimony Informational Briefing Hawaii Health Systems Corporation
House Committee on Health
Representative Della Au Belatti, Chair
Representative Dee Morikawa, Vice Chair
June 25, 2014
9:00 a.m. Room 325

Chair Belatti, Vice-Chair Morikawa and members of the Health Committee:

Thank you for the opportunity to testify on behalf of the Office of the Governor. According to the hearing notice, the purpose of the information briefing is to brief legislators on Hawaii Health Systems Corporation (HHSC)'s plans to streamline operations and address anticipated budget shortfalls.

THE SHORTFALL ISSUE

It is our understanding from discussions with HHSC after this 2014 legislative session that the current budgetary shortfall has HHSC and its regions undergoing an internal evaluation and starting the process for down-sizing its anticipated expenses to meet the amounts appropriated by the legislature. Some regions are further along that process than others, e.g. Kauai, but it is our understanding that all of regions will be undertaking this process. The Corporation Board¹ (Corporate Board) has given direction to the Regional System Boards (Regional Boards).²

While we defer to HHSC for more specific breakdowns and updated accurate figures, we have been advised that:

- HHSC received a lower amount of general fund FY15 appropriations (\$101,940.00, whereas for FY14, HHSC received approximately \$119,040.00);
- HHSC has a collective bargaining pay raise shortfall of approximately \$48M.

THE PLANS TO MEET THE SHORTFALL

We have been advised that the Regional Boards are all undertaking their tailored approaches to achieving the targets set by the Corporate Board in order for HHSC's expenses to meet the FY15 appropriations. This will take various forms of reduction in force (RIFs)³ closure of clinics, curtailment of services and other cost saving measures.

1 The 18 member board of directors that carries out the duties and responsibilities of the corporation under HRS § 323F-3.

2 The 5 regional system boards that have duties and responsibilities over the finances, real property, furnishings, equipment, etc. of the facilities within their geographic region under HRS § 323F-3.5.

3 We have been advised that even RIFs will not have the effect of realizing any immediate savings due to the potential for any employee to relying upon "bumping rights" which in sum would mean that more senior or experienced employees would be initially subject to the planned RIF still have the option to bump a lesser or more junior employee, which can continue downwards down the line until a final action is reached.

However, this path towards savings will likely be a long and complicated road due to a multitude of processes, competing dynamics and interests set forth below.

Law Proscribes a Process for Reduction of Services

First, HRS § 323F-31, Maintenance of services, provides a very specific procedure for any reduction that would be deemed to be a "planned substantial reduction or elimination of direct patient care services at any facility[.]"⁴

Thus, to what extent plans are "substantial", are "reductions or elimination" and are "direct patient care services" are not entirely clear and would depend on the specific plans and circumstances which can vary by region.

Second, the process details Regional and Corporation action, and then a community informational meeting. However, the Legislature is also given an opportunity to effect legislation that requires reinstatement and continuation and provides an appropriation.

Competing Dynamics

A review of the HHSC governance and statutory structure highlights certain fundamental problems when it comes to decision-making, authority, and ultimately, accountability. In sum, roles and authority between key players are intertwined in a way which precludes a clear pathway to effective and efficient decisions. This may be due to the fact that HHSC plays a critical role in health care access in our state, especially for neighbor islands. Thus, there may have been felt a need to insert "checks and balances" against any singular or clear authority. However, what this appears to have created is a landscape where interests may play out at odds.

Much of these factors listed below are not fully realized or tested, but are provided to illustrate the difficulty in finding a clear path through addressing the shortfall. Because there are different and perhaps not clearly defined roles between the key players when it comes to making decisions within and for HHSC, finding true and accurate accountability can be daunting and difficult since it depends on the specific set of circumstances and issues involved.

4 §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.

In 2007, significant power and authority was shifted to the Regional Boards. While this did provide for more "local control," and allowed for tailoring to fit differing circumstances of differing regions, it arguably did so at the expense of system-wide control over efficiencies and doing what is in the best interests for the system as a whole.

There is also a 1996 law that purportedly limits the authority of the Governor and Executive Branch. Under HRS § 323F-11, Executive branch, noninterference, there is a specific statutory limitation spelled out on the role of the Governor and the Executive Branch.⁵ However, this statutory language must be tempered against the Constitutional authority and responsibility provided in the Governor, and the Executive Branch when it comes to the executive power of the State (Art. V., Sec. 1), supervision of all departments and agencies (Art. V, Sec. 6), and Budget proposals (Art. VII, Sec. 8).

Furthermore, as it relates to issues of collective bargaining, there can sometimes be a difference in how the employer may negotiate when it comes to the perceived difference between being the *de jure* "employer" and being the *de facto* employer⁶

PUBLIC-PRIVATE PARTNERSHIPS

To that end, the Office of the Governor again reiterates its support for, but disappointment that Senate Bill 3064 did not pass in the 2014 legislative session. The bill would have allowed for the transition of HHSC to partner with or to be transferred to a nonprofit hospital corporation.

As stated at that time during testimony, we recognized that the current structure of HHSC is not sustainable for the long-term delivery of quality health care services for residents, especially those on the neighbor islands. The 2009 Stroudwater Report, commissioned by the Legislature, recommended that HHSC focus on efficiencies of scale, expand its expertise and develop a more integrated clinical delivery system that may include engaging a capital-operating partner as the most effective option for the future.

We are mindful that there needs to be a balance between the various interests of the state, community, employees, and labor to provide health services in the community. Thus, the Office of the Governor is encouraged that the House Health Committee is undertaking these information briefings in order to solicit and receive information that can help to provide a clear path forward and help to insure the future of HHSC.

Thank you for the opportunity to submit testimony.

⁵ **§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.

⁶ **§89-8.5 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.