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# A BILL FOR AN ACT

RELATING TO HEALTH.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. In Act 182, Session Laws of Hawaii 2009, the  
2 legislature authorized any of the regional systems or individual  
3 facilities of the Hawaii health systems corporation to  
4 transition into a new legal entity in any form recognized under  
5 the laws of the State. With the approval and support of its  
6 regional system board, at least one regional system has actively  
7 explored the possibilities of a public-private partnership  
8 allowed under section 323F-7.6, Hawaii Revised Statutes,  
9 including undertaking three formal solicitation efforts to gauge  
10 the interest of potential private partners locally and  
11 nationally.

12           In the course of the regional system's exploration of  
13 possible ventures with private partners, that regional system  
14 has contacted over twenty companies that operate in Hawaii and  
15 elsewhere in the United States. In 2012, that regional system  
16 submitted confidential information and memoranda describing the  
17 operational and financial landscape of its facilities to twelve  
18 different companies and contacted an additional eight entities



1 to explore their interest in a possible partnership. Over the  
2 course of these explorations, that regional system has  
3 undertaken serious and robust discussions with at least six  
4 preliminarily interested parties.

5 During the course of these efforts, the Hawaii health  
6 systems corporation has determined that the majority of  
7 potential partners are hesitant to evaluate partnership  
8 opportunities without enabling legislation that addresses  
9 certain structural issues related to such a transaction. In  
10 recent years, the only private entity outside Hawaii that was  
11 willing to invest resources to evaluate a partnership  
12 opportunity concurrently with the pursuit of enabling  
13 legislation eventually withdrew its interest when such  
14 legislation was not adopted. The regional system in that case  
15 has since engaged in discussion with other private entities,  
16 including one private entity that has indicated willingness to  
17 continue discussions concurrently with pursuit of enabling  
18 legislation.

19 The purpose of this Act is to ensure that the people of the  
20 State have continued access to health care services in areas  
21 served by regional systems of the Hawaii health systems



1 corporation. Accordingly, this Act authorizes the Maui regional  
2 system of the Hawaii health systems corporation, in  
3 collaboration with a private entity, to transition any one or  
4 more of its facilities to management and operation by a new  
5 nonprofit management entity.

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

9 **"PART . PUBLIC-PRIVATE COLLABORATION AND TRANSITION**  
10 **OF MAUI REGIONAL SYSTEM FACILITIES TO A NEW ENTITY**

11 **§323F-A Definitions.** As used in this part:

12 "Nonprofit management entity" means a nonprofit  
13 organization duly established under the laws of the State, the  
14 sole shareholder or member of which is the private entity, and  
15 the principal purpose of which is to manage and operate a  
16 transitioned facility.

17 "Pre-transition facility" means a facility of the Maui  
18 regional system prior to its transition into a transitioned  
19 facility.

20 "Private entity" means a business organization duly  
21 established under the laws of the State that operates medical



1 care facilities and with which, directly or through a wholly-  
2 owned nonprofit management entity, the Maui regional system or  
3 the State, as applicable, is authorized to enter into lease  
4 agreements and any other agreements contemplated or necessary  
5 under this part for the purpose of transferring business  
6 ownership interests of a pre-transition facility to a nonprofit  
7 management entity.

8 "Transitioned facility" means a medical facility of the  
9 Maui regional system:

- 10 (1) For which the ongoing right to conduct business is  
11 exclusively transferred to a nonprofit management  
12 entity subject to the limitations of this part;
- 13 (2) The management and operations of which become the sole  
14 responsibility of the nonprofit management entity; and
- 15 (3) The real property assets of which remain owned by the  
16 corporation or the State and shall be subject to a  
17 fixed-term lease agreement between the Maui regional  
18 system or the State, as applicable, and the nonprofit  
19 management entity, pursuant to section 323F-D.

20 **§323F-B Transition of a facility of the Maui regional**  
21 **system to management and operation by a nonprofit management**



1 **entity.** Notwithstanding any other law to the contrary,  
2 including but not limited to section 27-1, section 76-16(b) and  
3 other sections of chapter 76, chapters 78, 89, 89A, 89C, and  
4 171, part V of chapter 323D, and section 323F-7.6, the Maui  
5 regional system may negotiate an agreement with a private entity  
6 to transfer the exclusive right to conduct ongoing business at  
7 one or more of its facilities, including Maui memorial medical  
8 center, Kula hospital and clinic, and Lanai community hospital,  
9 to a nonprofit management entity wholly-owned by the private  
10 entity.

11 **§323F-C Approvals required.** Transition under this part  
12 shall occur only upon approval of the operating lease described  
13 in sections 323F-D and 323F-E by the governor and the Maui  
14 regional system board. Any documents associated with the  
15 transition shall be subject to review by the attorney general  
16 and the director of finance in their capacity to advise the  
17 governor.

18 **§323F-D Real property; terms and conditions.** (a) As a  
19 precondition to transfer of the exclusive right to conduct  
20 ongoing business at a facility under section 323F-B, the  
21 corporation or the Maui regional system board, or both, as



1 applicable, shall enter into a fixed-term operating lease of no  
2 less than twenty-five years with the nonprofit management entity  
3 for the purpose of leasing the facility's real property,  
4 including improvements and physical structures, and for  
5 operating the facility as set out in section 323F-E.

6 (b) The operating lease shall be subject to the following  
7 terms and conditions:

8 (1) Rent for the operating lease shall be a nominal \$1.00  
9 per year payable in advance and in full for the term  
10 of the lease;

11 (2) The operating lease shall not be terminated other than  
12 for good cause and upon a minimum of three hundred  
13 sixty-five days prior notice to ensure that the  
14 delivery of health care to the community served will  
15 not be disrupted;

16 (3) The nonprofit management entity shall have exclusive  
17 control of all matters related to the management and  
18 operation of the leased facilities, except as  
19 otherwise set forth in the operating lease;

20 (4) The responsibility to oversee the performance of the  
21 terms of the lease by the nonprofit management entity



1 shall rest with the Maui regional system board or the  
2 corporation, as applicable; and

3 (5) The corporation shall retain ownership of all leased  
4 property throughout the term of the operating lease.

5 **§323-E Management terms and other business assets.** The  
6 operating lease shall include terms and conditions for transfer  
7 of ownership or assignment of business operations at the  
8 transitioned facility, equipment and furnishings including any  
9 leases for the same, accounts receivable, medicare and other  
10 provider agreements, business and commercial licenses and  
11 registrations, intellectual property and goodwill, and any other  
12 current assets. The operating lease shall also include a ten-  
13 year business plan for the facility after completion of its  
14 transition into a transitioned facility, and the nonprofit  
15 management entity shall agree to make reasonable best efforts to  
16 achieve the performance goals described in the business plan.

17 **§323F-F Liabilities.** (a) The State, the Maui regional  
18 system board, the corporation, or one or more of these, shall  
19 assume current liabilities associated with accounts payable,  
20 accrued paid time off, debt, capital leases, malpractice  
21 liabilities, and other liabilities as of the effective date of



1 the operating lease described in section 323F-D. Any and all  
2 liabilities of the pre-transition facility that were transferred  
3 to the corporation upon its creation by Act 262, Session Laws of  
4 Hawaii 1996, all liabilities of the pre-transition facility  
5 related to collective bargaining contracts negotiated by the  
6 State, and the liability for all current outstanding post-  
7 employment benefits, shall remain the responsibility of the  
8 State.

9 (b) All future liabilities arising out of a transitioned  
10 facility's management and operation shall be the responsibility  
11 of the nonprofit management entity for that transitioned  
12 facility.

13 **§323F-G Employment, wages, and benefits.** (a) The  
14 corporation and the unions representing employees of the  
15 corporation shall meet to discuss the impact of the transition  
16 of a pre-transition facility on its employees.

17 (b) The employees working at a transitioned facility shall  
18 be subject to laws and regulations that apply to private sector  
19 employees. The employees of a nonprofit management entity shall  
20 not be governed by state laws that apply to public officers and  
21 employees of the State including but not limited to section





1 76-16(b) and all other sections of chapter 76, chapters 89 and  
2 89A, and any other laws and regulations that govern public or  
3 government employment in the State.

4 (c) Employees of a pre-transition facility shall be  
5 transitioned to employment at a transitioned facility under the  
6 terms and conditions of employment established by the nonprofit  
7 management entity for that transitioned facility.

8 (d) The nonprofit management entity shall offer all  
9 medical and nonmedical employees of the pre-transition facility,  
10 who satisfy the job qualifications for comparable positions and  
11 the employment requirements of the private entity, continued  
12 employment for an initial period established by the nonprofit  
13 management entity for newly hired employees, subject to any  
14 rules or policies applicable to employees of the nonprofit  
15 management entity. The nonprofit management entity may, at its  
16 discretion, continue to employ any or all medical and nonmedical  
17 employees at the transitioned facility after the initial period.

18 (e) No employee of the corporation who is separated from  
19 service as a result of implementation of an agreement and  
20 transition under this part shall suffer any loss of retirement



1 allowance earned as provided in section 88-74 or any loss of  
2 vacation leave earned and accumulated.

3 (f) Subject to subsection (d), the nonprofit management  
4 entity shall take all reasonable steps necessary to provide for  
5 a smooth transition of employees from state employment to  
6 private employment by the nonprofit management entity at a  
7 transitioned facility.

8 **§323F-H Operating support.** (a) Without regard to chapter  
9 42F, a nonprofit management entity or the Maui regional system  
10 may seek funds from the State for its operating costs, as  
11 defined in section 37-62, of a transitioned facility by  
12 preparing a budgetary request in accordance with procedures and  
13 criteria established by the director of finance. In no event  
14 shall the amount requested exceed the amount appropriated for  
15 the operating costs of the Maui regional system for the 2014  
16 fiscal year. The director of finance shall review the request  
17 and may include some or all of the amount requested in the  
18 executive budget of the department of health. Any appropriation  
19 made in response to the request shall be subject to the  
20 allotment system generally applicable to all appropriations made  
21 by the legislature. The department of health shall be



1 responsible for transferring the funds allotted to the nonprofit  
2 management entity or the Maui regional system for expenditure.

3 (b) To qualify to request funds from the State under this  
4 section, a nonprofit management entity or the Maui regional  
5 system shall satisfy the following standards and conditions:

- 6 (1) Be incorporated under the laws of the State, and  
7 determined and designated to be a nonprofit  
8 organization by the Internal Revenue Service, or, in  
9 the case of the Maui regional system, continue to be  
10 designated as a regional system pursuant to section  
11 323F-2(b);
- 12 (2) Be licensed and accredited, in accordance with  
13 federal, state, or county statutes, rules, or  
14 ordinances, to conduct the activities for which  
15 funding is sought;
- 16 (3) Have a governing board whose members have no material  
17 conflict of interest and serve without compensation;
- 18 (4) Have bylaws or policies that describe the manner in  
19 which business is conducted, prohibit nepotism, and  
20 provide for the management of potential conflict of  
21 interest situations;



- 1 (5) Be in compliance with all of the requirements of  
2 chapter 323D with respect to the transitioned facility  
3 and any other health care facility it operates;
- 4 (6) Submit tax clearances from the director of taxation  
5 and the Internal Revenue Service to the effect that  
6 all tax returns due have been filed, and all taxes,  
7 interest, and penalties levied or accrued against have  
8 been paid, or, in the case of the Maui regional  
9 system, paid as appropriate with respect to the  
10 corporation;
- 11 (7) Submit to an annual audit, disclose revenue  
12 projections, and prepare an annual internal  
13 performance audit and itemized financial statements,  
14 including reimbursement rates, with respect to a  
15 transitioned facility, in the same manner as described  
16 in section 323F-22; and
- 17 (8) Submit its annual budget with respect to a  
18 transitioned facility to the legislature for review at  
19 least twenty days prior to the convening of the  
20 regular legislative session.



1           **§323F-I Capital project support.** (a) Without regard to  
2 chapter 42F, a nonprofit management entity or the Maui regional  
3 system may seek funds from the State for capital expenditures,  
4 as that term is defined in section 37-62, for a transitioned  
5 facility for each or all of the first ten years of the operating  
6 lease required by section 323F-D, using the ten-year business  
7 plan described in section 323F-E for guideline purposes. Each  
8 year's request for funds shall be submitted to the director of  
9 finance in accordance with procedures and criteria established  
10 by the director, and reviewed by the director and comptroller  
11 with pertinent capital planning and expenditure documents, and  
12 the capital planning procedures supplied by the nonprofit  
13 management entity or the Maui regional system. The director of  
14 finance may include some or all of the funds requested in the  
15 executive budget of the department of health. Any appropriation  
16 made in response to a request shall be subject to the allotment  
17 system generally applicable to all appropriations made by the  
18 legislature. The department of health shall be responsible for  
19 transferring the funds allotted to the nonprofit management  
20 entity or the Maui regional system for expenditure.



1 (b) After the first ten years of the operating lease, the  
2 nonprofit management entity and the private entity shall be  
3 responsible for funding all capital expenditures of the  
4 transitioned facility.

5 (c) To qualify to request funds from the State under this  
6 section, a nonprofit management entity or the Maui regional  
7 system shall satisfy all of the standards and conditions set out  
8 in section 323F-H(b). In addition, the transitioned facility  
9 shall demonstrate that the capital projects constructed,  
10 operated, and maintained with the requested funds will be in  
11 compliance with all federal, state, and county health care  
12 planning laws and rules, land use and zoning laws and rules,  
13 environmental laws and rules, and building and health codes,  
14 rules, and regulations.

15 **§323F-J Strategic commitment during term of lease. (a)**

16 The private entity shall be committed to supporting the  
17 nonprofit management entity and any transitioned facility to  
18 achieve excellence and improve access to services in Maui  
19 county.

20 (b) The private entity and the nonprofit management entity  
21 shall establish a governance and management structure for a



1 transitioned entity that seeks to improve its performance. The  
2 private entity and the nonprofit management entity shall apply  
3 efficiencies of scale, consolidation of shared services, and  
4 administrative and technological expertise to improve the health  
5 care performance of a transitioned facility.

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

- 8 (1) Expanding primary care access throughout Maui;
- 9 (2) Recruiting and rotating specialists to fill current  
10 service gaps;
- 11 (3) Extending the private entity's service line  
12 coordination to Maui, including but not limited to  
13 cancer, cardiology, orthopedics, pyschiatry,  
14 pediatrics, and women's health services;
- 15 (4) Coordinating long-term care patients and reducing wait  
16 lists;
- 17 (5) Upgrading facilities and equipment as needed to  
18 provide high quality care and to enhance patient  
19 experience; and



1           (6) Incorporating the Maui region into the private  
2           entity's value-based contracting initiatives to better  
3           align quality and cost initiatives."

4           SECTION 3. In codifying the new sections added by section  
5           2 of this Act, the revisor of statutes shall substitute  
6           appropriate section numbers for the letters used in designating  
7           the new sections in this Act.

8           SECTION 4. This Act shall take effect on July 1, 2015.

9





**Report Title:**

Maui Regional System Facilities; Public-private Collaboration;  
Transition to New Private Nonprofit Corporation

**Description:**

Authorizes the Maui regional system of the Hawaii health systems corporation, in collaboration with a private entity, to transition any one or more of its facilities to management and operation by a new nonprofit management entity. (SD2)

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