



HAWAII HEALTH SYSTEMS

C O R P O R A T I O N

Quality Healthcare For All

Q&A

Impasse in lease negotiations between Hawaii Health Systems Corp. and Pacific Cancer Institute

While Hawaii Health Systems Corporation (HHSC) was reviewing its contracts in preparation for the transfer of its Maui County hospitals, HHSC determined that there were violations of federal law in the current lease arrangement between Pacific Cancer Institute (PCI), formerly known as Bobby C. Baker M.D., Inc., and HHSC. HHSC self-reported the violations to the United States Office of the Inspector General (OIG). The OIG is responsible for oversight and may assess penalties against HHSC as a result of the noncompliant lease arrangement. The OIG has set a deadline of **January 31, 2018** for HHSC to execute a compliant lease with PCI or terminate the lease arrangement and require PCI to cease operations.

In an effort to meet the OIG's deadline, and after more than a year of substantial, but unsuccessful good faith negotiations with PCI, HHSC filed a complaint against PCI in state court on Maui. This is not an action that HHSC wanted to take. It was done so that HHSC could obtain an order from the court declaring the lease arrangement void due to illegality.

HHSC's top priorities are to ensure that radiation therapy services remain accessible to patients in Maui County and to be fully compliant with the law.

What is HHSC?

HHSC is the state's system of public hospitals.

What is PCI?

Currently the only provider of radiation therapy services in Maui County, PCI was founded by Maui physician Bobby Baker, M.D., who has been operating on the Maui Memorial Medical Center campus since 1993. Dr. Baker recently sold 95 percent of his interest in the company to Alliance Oncology, a mainland for-profit company, for \$11,970,000.

What is HHSC seeking?

1. Continued uninterrupted access to radiation therapy services for patients residing in Maui County; and
2. To be compliant with all federal and state laws.

Which laws are being broken by the current lease between HHSC and PCI?

1. The Stark Law
2. The Anti-Kickback Statute

The **Stark Law** is a set of federal laws that prohibit physician self-referral. This means that a physician is prohibited from referring a Medicare or Medicaid patient to a health services provider if the physician (or an immediate family member of the physician) has a financial relationship with that provider.

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The federal **Anti-Kickback Statute** prohibits the exchange of anything of value in an effort to induce (or reward) the referral of federal health care program business. This means, for example, that a hospital is prohibited from paying physicians to refer patients to the hospital.

Upon the determination that the lease arrangement violated the law, HHSC self-reported the noncompliance to the OIG.

What needs to be negotiated?

Services that were previously provided to PCI at little or no cost must, on a going forward basis, be assessed and paid, as a matter of law. This must be paid at the fair market value, as determined by a third party appraisal.

How can the lease arrangement become compliant?

A new compliant lease must be executed or PCI must cease operations by January 31, 2018.

Why can't HHSC just let things operate as usual?

All healthcare providers must operate in compliance with federal and state laws. These laws protect patients. To avoid additional penalties, including losing past or future payments for Medicare and Medicaid patients, HHSC has no alternative course of action.

What if PCI refuses to execute a new lease? Will PCI shut down?

The decision whether or not to comply with federal law is PCI's to make. HHSC cannot remain in a lease arrangement that violates federal law. As Maui County's only radiation therapy provider, PCI's services are of vital importance, but PCI must make its own business decision whether to continue operating in Maui. Although this is not what HHSC or the patients in Maui County want, PCI could choose to cease operations rather than enter into a compliant lease.

How would Maui County oncology patients receive services if PCI ceased operations?

Until a new provider is established in Maui County, patients who might otherwise have received treatment at PCI may need to obtain treatment from one of the multiple providers throughout the state on Hawaii Island, Kauai and Oahu. According to the State Health Planning and Development Agency records, radiation therapy centers are located at:

- Hilo Medical Center (Hawaii Island - Hilo)
- Kona Community Hospital (Hawaii Island - Kona)
- Kauai Oncology Institute (Kauai)
- Cancer Center of Hawaii (two locations on Oahu - Leeward and Liliha)
- Kuakini Medical Center (Oahu - Liliha)
- Queens Medical Center (Oahu - downtown)

When would this happen?

Nothing should change for patients before January 31, 2018. HHSC is doing everything that it can to enter into a compliant lease so that radiation therapy services remain available in Maui County.

How would patients select a new provider and get reimbursed for travel costs?

The best source of information is the patients' oncologists or attending physicians. Maui County patients currently receiving treatment at PCI are encouraged to contact their physicians prior to February 1, 2018 to discuss their treatment options, choices for radiation therapy providers on other islands and their insurance carriers' travel reimbursement policy.

What are HHSC and PCI doing to keep the services available?

For the last year, HHSC has attempted to negotiate a compliant lease arrangement, including attending mediation with a mediator chosen by PCI. HHSC has never treated this arrangement as a "revenue center" and has been willing to make compromises with respect to provisions that are not governed by federal law. Notwithstanding these efforts, PCI has refused to enter into a new lease. At this time, HHSC expects PCI to continue operations uninterrupted through January 31, 2018.

Does this have anything to do with the transfer of the operations and management of MHS?

No. While HHSC was reviewing its contracts in preparation for the transfer of its Maui County hospitals, the violations in the PCI ground lease were identified and later self-reported by HHSC to the United States Office of the Inspector General (OIG). The OIG – the federal agency responsible for oversight of these laws –informed HHSC that it must either execute a compliant lease or require PCI to cease operations on the MMMC campus by January 31, 2018.