

S.B. NO. 1436

JAN 22 2007

A BILL FOR AN ACT

RELATING TO ACCESS TO HEALTH CARE.

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

1 SECTION 1. The purpose of this Act is to improve the
2 quality of Hawaii's health care system. In implementing chapter
3 323D, Hawaii Revised Statutes, the State Health Planning and
4 Development Agency (SHPDA), in the past, has focused on its
5 "gatekeeper" role by devoting substantial time and resources to
6 adjudications of requests for a Certificate of Need ("CON").
7 The CON process: (1) acts as an impediment to Hawaii health care
8 providers that desire to expand their health care services; and
9 (2) serves as a barrier to new medical providers starting up
10 business in this State. This Act amends chapter 323D, HRS, to
11 clarify the "development" responsibility of the SHPDA so that
12 the SHPDA will focus greater time and resources on enhancing
13 access to quality health care within this State.

14 Currently, chapter 323D mandates that health care providers
15 seek a Certificate of Need (CON) from the SHPDA if they wish (1)
16 to begin offering most types of health care services; (2) to end
17 rendering most types of health care services; (3) to provide such
18 health care services at a different location; or (4) to construct

S.B. NO. 1436

1 virtually any type of health care facility. The Hawaii CON
2 program is extensive in its regulation of health care service
3 providers and its regulation of the construction of health care
4 facilities. The SHPDA has adopted administrative rules in
5 chapter 11-186, Hawaii Administrative Rules, which (1) define
6 "health care services" more broadly so that all services are
7 subject to the CON requirement of chapter 323D, HRS; and (2)
8 broadly define the types of health care facilities that are also
9 subject to the CON requirement of chapter 323D, HRS.

10 To encourage the development and expansion of the medical
11 industry and to welcome improvements in medical technology, this
12 Act redefines and narrows the scope of the CON requirement under
13 chapter 323D so that CONs are required only for (1) emergency
14 rooms; (2) freestanding emergency care facilities; and (3)
15 surface ambulance services.

16 For those health care providers that remain subject to the
17 CON requirement, this Act further revises the CON administrative
18 process in chapter 323D, HRS, as follows: (1) the order in which
19 the the statewide health coordinating council ("statewide
20 council") and the subarea health planning councils ("county
21 councils") hear a CON application is reversed so that the SHPDA
22 administrator and the county council are the last to consider

1 the CON request; (2) eliminates the review panel as an
2 unnecessary step; (3) the SHPDA administrator is required to
3 accord greater weight to the county council's decision when the
4 state council's and county council's recommendations conflict;
5 and (4) a hearing on an applicant's request for reconsideration
6 must be held on the island where the new facility or activity
7 will be based.

8 With these amendments to chapter 323D, the Legislature
9 anticipates that the State's health care services and health
10 care facilities will be improved to make Hawaii a destination
11 location for patients in the Asia-Pacific region who are seeking
12 quality health care services.

13 SECTION 2. Chapter 323D, Hawaii Revised Statutes, is
14 amended by adding to part V a new section to be appropriately
15 designated and to read as follows:

16 "§323D- State agency review of subarea council and
17 statewide council recommendations for issuance or denial of
18 certificate of need. In reviewing the recommendations of the
19 respective subarea council and the statewide council regarding a
20 certificate of need application, the state agency shall give
21 greater weight to the recommendation of the respective subarea
22 council if it conflicts with the recommendation of the statewide

1 council, unless the state agency finds good cause exists to
2 reject such recommendation."

3 SECTION 3. Section 323D-1, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§323D-1 [~~Purpose~~] General purpose and objectives. The
6 purpose of this chapter is to establish a health planning and
7 resources development program to promote accessibility for all
8 the people of the State to quality health care services at
9 reasonable cost.

10 It shall be the objectives of this health planning and
11 resources development program:

12 (1) To make broad policy determinations with respect to
13 development of the health care industry, and to
14 stimulate through research and demonstration projects
15 those industrial and economic development efforts that
16 offer the most immediate promise of expanding the
17 health care industry, and the types of health care
18 services available in this state, and of further
19 diversifying this State's economy;

20 (2) To determine through technical and research studies
21 the profit potential of new or expanded undertakings

1 in the health care industry and high technology
2 medical research;

3 (3) To disseminate information to assist current health
4 care providers and high technology medical researchers
5 in this State; to attract new health care providers
6 and high technology medical researchers to this State;
7 and to encourage capital investment in existing and
8 new areas of health care services and high technology
9 medical research;

10 (4) To encourage innovation of research into new medical
11 technologies to improve the lives of this State's
12 citizens as well as encourage others from within this
13 country and from the world to seek medical treatment
14 from health care providers and high technology medical
15 researchers in Hawaii;

16 (5) To enter into contracts as may be necessary or
17 advisable to accomplish the foregoing purpose and
18 objectives;

19 (6) To work collaboratively with other state departments
20 and agencies and with other governmental entities
21 operating both within and outside this State to
22 accomplish the foregoing purpose and objectives; and

1 (7) To disseminate information developed for or by the
2 program pertaining to the development of this State's
3 health care providers and high technology medical
4 researchers to assist the present health care and
5 medical research industry in this State; to attract
6 new industry and investment in this state in highly
7 advanced medical technologies; and to lead this State
8 into becoming America's vanguard of cutting edge
9 medical technology, particularly in the Asia-Pacific
10 region."

11 SECTION 4. Section 323D-2, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "§323D-2 Definitions. [As used in this chapter:] Whenever
14 used in this chapter, and unless the context requires otherwise:

15 "Applicant" means any person who applies for a certificate
16 of need under part V.

17 ~~["Assisted living facility" means a combination of housing,~~
18 ~~health care services, and personalized support services designed~~
19 ~~to respond to individual needs, and to promote choice,~~
20 ~~responsibility, independence, privacy, dignity, and~~
21 ~~individuality. In this context, "health care services" means~~
22 ~~the provision of services in an assisted living facility that~~

1 ~~assists the resident in achieving and maintaining the highest~~
2 ~~state of positive well being (i.e., psychological, social,~~
3 ~~physical, and spiritual) and functional status. This may~~
4 ~~include nursing assessment and monitoring, and the delegation of~~
5 ~~nursing tasks by registered nurses pursuant to chapter 457, care~~
6 ~~management, monitoring, records management, arranging for,~~
7 ~~and/or coordinating health and social services.]~~

8 "Capital expenditure" means any purchase or transfer of
9 money or anything of value or enforceable promise or agreement
10 to purchase or transfer money or anything of value incurred by
11 or in behalf of any person for construction, expansion,
12 alteration, conversion, development, initiation, or modification
13 as defined in this section. The term includes the:

14 (1) Cost of studies, surveys, designs, plans, working
15 drawings, specifications, and other preliminaries
16 necessary for construction, expansion, alteration,
17 conversion, development, initiation, or modification;

18 (2) Fair market values of facilities and equipment
19 obtained by donation or lease or comparable
20 arrangements as though the items had been acquired by
21 purchase; and

1 (3) Fair market values of facilities and equipment
2 transferred for less than fair market value, if a
3 transfer of the facilities or equipment at fair market
4 value would be subject to review under section 323D-
5 43.

6 "Certificate of need" means an authorization, when required
7 pursuant to section 323D-43, to construct, expand, alter, or
8 convert [~~a health care~~] an emergency room or freestanding
9 emergency care facility or to initiate, expand, develop, or
10 modify a [~~health care~~] surface ambulance service.

11 "Construct", "expand", "alter", "convert", "develop",
12 "initiate", or "modify" includes the erection, building,
13 reconstruction, modernization, improvement, purchase,
14 acquisition, or establishment of [~~a health care~~] an emergency
15 room or freestanding emergency care facility or [~~health care~~]
16 surface ambulance service; the purchase or acquisition of
17 equipment attendant to the delivery of [~~health care service~~]
18 these activities and the instruction or supervision therefor;
19 the arrangement or commitment for financing the offering or
20 development of [~~a health care facility or health care~~] an
21 emergency room or freestanding emergency care facility or
22 surface ambulance service; any objection for a capital

1 expenditure by ~~[a health care facility]~~ these activities; and
2 studies, surveys, designs, plans, working drawings,
3 specifications, procedures, and other actions necessary for any
4 such undertaking, which will:

5 (1) Result in a total capital expenditure in excess of the
6 expenditure minimum,

7 (2) Substantially modify, decrease, or increase the scope
8 or type of ~~[health]~~ emergency room, freestanding
9 emergency care, or surface ambulance service rendered,
10 ~~[or]~~

11 ~~[(3) Increase, decrease, or change the class of usage of~~
12 ~~the bed complement of a health care facility.]~~

13 "Emergency room services" means services provided in a
14 designated unit within a hospital for the immediate treatment of
15 injury and other types of health emergencies.

16 "Expenditure minimum" means \$4,000,000 for capital
17 expenditures, \$1,000,000 for new or replacement medical
18 equipment and \$400,000 for used medical equipment.

19 ~~["Extended care adult residential care home" means an adult~~
20 ~~residential care home providing twenty four hour living~~
21 ~~accommodation for a fee, for adults unrelated to the licensee.~~
22 ~~The primary caregiver shall be qualified to provide care to~~

1 ~~nursing facility level individuals who have been admitted to a~~
2 ~~Medicaid waiver program, or persons who pay for care from~~
3 ~~private funds and have been certified for this type of facility.~~
4 ~~There shall be two categories of extended care adult residential~~
5 ~~care homes, which shall be licensed in accordance with rules~~
6 ~~adopted by the department of health.~~

7 ~~(1) Type I home shall consist of five or less unrelated~~
8 ~~persons with no more than two extended care adult~~
9 ~~residential care home residents; and~~

10 ~~(2) Type II home shall consist of six or more unrelated~~
11 ~~persons and one or more persons may be extended care~~
12 ~~adult residential care home residents.]~~

13 "Freestanding emergency care facility" means an
14 establishment, place, or facility structurally distinct and
15 separate from a hospital which represents itself either through
16 advertising or name as providing emergency medical care services
17 in life, limb, or function threatening conditions beyond the
18 occasional emergency that occurs in the normal course of any
19 clinical practice."

20 "Health" includes physical and mental health.

21 ~~["Health care facility" and "health care service" include~~
22 ~~any program, institution, place, building, or agency, or portion~~

1 ~~thereof, private or public, other than federal facilities or~~
2 ~~services, whether organized for profit or not, used, operated,~~
3 ~~or designed to provide medical diagnosis, treatment, nursing,~~
4 ~~rehabilitative, or preventive care to any person or persons.~~
5 ~~The terms include, but are not limited to, health care~~
6 ~~facilities and health care services commonly referred to as~~
7 ~~hospitals, extended care and rehabilitation centers, nursing~~
8 ~~homes, skilled nursing facilities, intermediate care facilities,~~
9 ~~hospices for the terminally ill that require licensure or~~
10 ~~certification by the department of health, kidney disease~~
11 ~~treatment centers including freestanding hemodialysis units,~~
12 ~~outpatient clinics, organized ambulatory health care facilities,~~
13 ~~emergency care facilities and centers, home health agencies,~~
14 ~~health maintenance organizations, and others providing similarly~~
15 ~~organized services regardless of nomenclature.~~

16 ~~"Health care provider" means a health care facility,~~
17 ~~physician, dentist licensed under chapter 448, chiropractor~~
18 ~~licensed under chapter 442, optometrist licensed under chapter~~
19 ~~459, podiatrist licensed under chapter 463E, psychologist~~
20 ~~licensed under chapter 465, occupational therapist subject to~~
21 ~~chapter 457C, and physical therapist licensed under chapter~~
22 ~~461J.]~~

1 ~~["Organized ambulatory health care facility" means a~~
2 ~~facility not part of a hospital, which is organized and operated~~
3 ~~to provide health services to outpatients. The state agency may~~
4 ~~adopt rules to establish further criteria for differentiating~~
5 ~~between the private practice of medicine and organized~~
6 ~~ambulatory health care facilities.]~~

7 "Person" means an individual or a natural person, a trust
8 or estate, a society, a firm, an assembly, a partnership, a
9 corporation, a professional corporation, an association, the
10 State, any political subdivision of the State, a county, a state
11 agency or any instrumentality of the State, a county agency or
12 any instrumentality of a county.

13 ~~["Physician" means a doctor of medicine or osteopathy who~~
14 ~~is legally authorized to practice medicine and surgery by the~~
15 ~~State.]~~

16 ~~["Primary care clinic" means a clinic for outpatient~~
17 ~~services providing all preventive and routine health care~~
18 ~~services, management of chronic diseases, consultation with~~
19 ~~specialists when necessary, and coordination of care across~~
20 ~~health care settings or multiple providers or both. Primary~~
21 ~~care clinic providers include:~~

22 ~~(1) General or family practice physicians;~~

1 ~~(2) General internal medicine physicians,~~

2 ~~(3) Pediatricians,~~

3 ~~(4) Obstetricians and gynecologists,~~

4 ~~(5) Physician assistants, and~~

5 ~~(6) Advanced practice registered nurses.]~~

6 ~~["Review panel" means the panel established pursuant to~~
7 ~~section 323D-42.]~~

8 "State agency" means the state health planning and
9 development agency established in section 323D-11.

10 "State health services and facilities plan" means the
11 comprehensive plan for the economical delivery of health
12 services in the State prepared by the statewide council.

13 "Statewide council" means the statewide health coordinating
14 council established in section 323D-13.

15 "Subarea" means one of the geographic subareas designated
16 by the state agency pursuant to section 323D-21.

17 "Subarea council" means a subarea health planning council
18 established pursuant to section 323D-21.

19 "Substantially modify, decrease, or increase the scope or
20 type of health service" refers to the establishment of a new
21 ~~[health care facility or health care service or the addition of~~
22 ~~a clinically related (i.e., diagnostic, curative, or~~

1 ~~rehabilitative) service not previously provided or the~~
2 ~~termination of such a service which had previously been~~
3 ~~provided.] emergency room, freestanding emergency care facility,~~
4 ~~or surface ambulance service.~~

5 "Surface ambulance" services include transportation of a
6 patient in any motor vehicle or watercraft specifically
7 equipped, designed or constructed and maintained or operated for
8 the purpose of accommodating the medical needs of patients."

9 SECTION 5. Section 323D-12, Hawaii Revised Statutes, is
10 amended to read as follows:

11 **"§323D-12 Health planning and development functions; state**
12 **agency. (a) The state agency shall:**

13 (1) Have as a principal function the responsibility for
14 promoting accessibility for all the people of the
15 State to quality health care services at reasonable
16 cost. ~~[The state agency shall conduct such studies~~
17 ~~and investigations as may be necessary as to the~~
18 ~~causes of health care costs including inflation. The~~
19 ~~state agency may contract for services to implement~~
20 ~~this paragraph. The certificate of need program~~
21 ~~mandated under part V shall serve this function. The~~
22 ~~state agency shall promote the sharing of facilities~~

1 ~~or services by health care providers whenever possible~~
2 ~~to achieve economies and shall restrict unusual or~~
3 ~~unusually costly services to individual facilities or~~
4 ~~providers where appropriate.]~~

5 (2) Serve as staff to and provide technical assistance and
6 advice to the statewide council and the subarea
7 councils in the preparation, review, and revision of
8 the state health services and facilities plan;

9 (3) Conduct the health planning activities of the State in
10 coordination with the subarea councils, implement the
11 state health services and facilities plan, and
12 determine the statewide health needs of the State
13 after consulting with the statewide council; and

14 (4) Administer the state certificate of need program
15 pursuant to part V.

16 (b) The state agency may:

17 (1) Prepare such reports and recommendations on Hawaii's
18 health care costs and public or private efforts to
19 reduce or control costs and health care quality as it
20 deems necessary. The report may include, but not be
21 limited to, a review of health insurance plans, the
22 availability of various kinds of health insurance and

- 1 malpractice insurance to consumers, and strategies for
2 increasing competition in the health insurance field.
- 3 (2) Prepare and revise as necessary the state health
4 services and facilities plan.
- 5 (3) Prepare, review, and revise the annual implementation
6 plan.
- 7 (4) Assist the statewide council in the performance of its
8 functions.
- 9 (5) Determine the need for new health services proposed to
10 be offered within the State.
- 11 (6) Assess existing health care services and facilities to
12 determine whether there are redundant, excessive, or
13 inappropriate services or facilities and make public
14 findings of any that are found to be so. [~~The state
15 agency shall weigh the costs of the health care
16 services or facilities against the benefits the
17 services or facilities provide and there shall be a
18 negative presumption against marginal services.~~]
- 19 (7) Provide technical assistance to persons, public or
20 private, in obtaining and filling out the necessary
21 forms for the development of projects and programs.

S.B. NO. 1436

1 (8) Prepare reports, studies, and recommendations on
2 emerging health issues, such as medical ethics,
3 ~~[health care rationing,~~] involuntary care, care for
4 the indigent, and standards for research and
5 development of biotechnology and genetic engineering.

6 (9) Conduct such other activities as are necessary to meet
7 the purposes of this chapter."

8 SECTION 6. Section 323D-14, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "**§323D-14 Functions; statewide health coordinating council.**

11 The statewide council shall:

12 (1) Prepare and revise as necessary the state health
13 services and facilities plan;

14 (2) Advise the state agency on actions under section 323D-
15 12; and

16 ~~[(3) Appoint the review panel pursuant to section 323D-42,~~
17 ~~and~~

18 ~~(4) Review and comment upon the following actions by the~~
19 ~~state agency before such actions are made final,~~

20 ~~(A) The making of findings as to applications for~~
21 ~~certificate of need; and~~

S.B. NO. 1436

1 ~~(B) The making of findings as to the appropriateness~~
2 ~~of those institutional and noninstitutional~~
3 ~~health services offered in the State.]~~

4 (5) Perform the initial review of certificate of need
5 applications including making recommendations to the
6 State agency and the respective Subarea council and
7 commenting upon the CON application."

8 SECTION 7. Section 323D-18, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "§323D-18 Information required of providers. Providers of
11 health care doing business in the State shall submit such
12 statistical and other reports of information related to health
13 and health care as the state agency finds necessary to the
14 performance of its functions[~~. The information deemed necessary~~
15 ~~includes but is not limited to:] including~~

16 (1) Information regarding changes in the class of usage of
17 the bed complement of a health care facility under
18 section 323D-54(9) [;]_

19 [~~(2) Implementation of services under section 323D-54,~~

20 ~~(3) Projects that are wholly dedicated to meeting the~~
21 ~~State's obligations under court orders, including~~
22 ~~consent decrees, under section 323D-54(10);~~

S.B. NO. 1436

- 1 ~~(4) Replacement of existing equipment with an updated~~
2 ~~equivalent under section 323D-54(11);~~
- 3 ~~(5) Primary care clinics under the expenditure thresholds~~
4 ~~under section 323D-54(12); and~~
- 5 ~~(6) Equipment and services related to that equipment, that~~
6 ~~are primarily intended for research purposes as~~
7 ~~opposed to usual and customary diagnostic and~~
8 ~~therapeutic care.] "~~

9 SECTION 8. Section 323D-22, Hawaii Revised Statutes, is
10 amended by amending subsection (a) to read as follows:

11 "(a) Each subarea health planning council shall review, seek
12 public input, and make recommendations relating to health
13 planning for the geographical subarea it serves. In addition,
14 the subarea health planning councils shall:

15 (1) Identify and recommend to the state agency and the
16 council the data needs and special concerns of the
17 respective subareas with respect to the preparation of
18 the state plan.

19 (2) Provide specific recommendations to the state agency
20 and the council regarding the highest priorities for
21 health services and resources development.

S.B. NO. 1436

- 1 (3) Review the state health services and facilities plan
2 as it relates to the respective subareas and make
3 recommendations to the state agency [~~and the~~
4 ~~council.~~].
- 5 (4) Advise the state agency in the administration of the
6 certificate of need program for their respective
7 subareas[~~er~~], including reviewing comments of the
8 Statewide Council and making a final recommendation to
9 the SHPDA Administrator.
- 10 (5) Advise the state agency on the cost of reimbursable
11 expenses incurred in the performance of their
12 functions for inclusion in the state agency budget.
- 13 (6) Advise the state agency in the performance of its
14 specific functions.
- 15 (7) Perform other such functions as agreed upon by the
16 state agency and the respective subarea councils.
- 17 (8) Each subarea health planning council shall recommend
18 for gubernatorial appointment at least one person from
19 its membership to be on the statewide council."

20 SECTION 9. Section 323D-43, Hawaii Revised Statutes, is
21 amended by amending subsection (a) to read as follows:

1 "(a) No person, public or private, nonprofit, or for
2 profit, shall:

3 (1) Construct, expand, alter, convert, develop, initiate,
4 or modify [~~a health care facility~~] an emergency room,
5 freestanding emergency facility, or [~~health care~~
6 ~~services~~] surface ambulance service in the State that
7 requires a total capital expenditure in excess of [~~the~~
8 ~~expenditure minimums~~] \$1 million; or

9 (2) Substantially modify or increase the scope or type of
10 [~~health service~~] emergency room, freestanding
11 emergency care facility, or surface ambulance service
12 rendered [~~or~~]

13 [~~(3) Increase, decrease, or change the class of usage of~~
14 ~~the bed complement of a health care facility, or~~
15 ~~relocate beds from one physical facility or site to~~
16 ~~another,~~] unless a certificate of need therefore has
17 first been issued by the state agency."

18 SECTION 10. Section 323D-44, Hawaii Revised Statutes, is
19 amended by amending subsection (1) to read as follows:

20 "(a) An applicant for a certificate of need shall file an
21 application with the state agency. The state agency shall

1 provide technical assistance to the applicant in the preparation
2 and filing of the application.

3 Each application shall include a statement evaluating the
4 facility's or service's probable impact on health care costs and
5 providing additional data as required by rule. The statement
6 shall include cost projections for at least the first and third
7 years after its approval.

8 The state agency shall not accept an application for review
9 until the application is complete and includes all necessary
10 information required by the state agency. The state agency
11 shall determine if the application is complete within thirty
12 days of receipt of the application. If the state agency
13 determines that the application is incomplete, the state agency
14 shall inform the applicant of the additional information that is
15 required to complete the application. When the state agency
16 determines that the application is complete, the period for
17 agency review described in subsection (b) shall begin, and the
18 state agency shall transmit the completed application to the
19 appropriate subarea councils, [~~the review panel,~~] the statewide
20 council, appropriate individuals, and appropriate public
21 agencies. The state agency may require the applicant to provide
22 copies of the application to the state agency, the appropriate

1 subarea councils, [~~the review panel,~~] the statewide council,
2 appropriate individuals, and appropriate public agencies. If,
3 during the period for agency review, the state agency requires
4 the applicant to submit information respecting the subject of
5 the review, the period for agency review shall, at the request
6 of the applicant, be extended fifteen days.

7 SECTION 11. Section 323D-44.5, Hawaii Revised Statutes, is
8 amended to read as follows:

9 **"§323D-44.5 Administrative review of certain applications**
10 **for certificate of need.** The state agency shall adopt rules in
11 conformity with chapter 91 providing for administrative review
12 and decision on certain applications for certificate of need.
13 Each application reviewed under this section may be subject to a
14 public information meeting before the state agency makes its
15 decision. The agency, in the State and in the county affected,
16 shall give public notice of applications for administrative
17 review received by the agency. Interested persons may request
18 in writing a public meeting before the agency renders a decision
19 on the administrative application. If a request for a public
20 meeting is received, the administrator will preside over the
21 meeting. If no request is received by the agency within seven
22 days of the public notice date, no public meeting need be

1 scheduled. Applications subject to administrative review and
2 decision under this section shall ~~[include but are not limited~~
3 ~~to applications that are:]~~ be limited to those dealing with
4 emergency room, freestanding emergency care facilities, and
5 surface ambulance services.

6 ~~[(1) Inconsistent with or contrary to the state health~~
7 ~~services and facilities plan under section 323D-15,~~
8 ~~(2) Determined not to have a significant impact on the~~
9 ~~health care system, or~~
10 ~~(3) Involve capital or annual operating expenses below a~~
11 ~~significant level.]"~~

12 SECTION 12. Section 323D-44.6, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "§323D-44.6 Review of certain applications for certificate
15 of need; waiver. The ~~[subarea]~~ Statewide council, ~~[the review~~
16 ~~panel,]~~ and the ~~[statewide]~~ Subarea council may, at their
17 discretion, choose to waive their respective prerogatives of
18 review of any certificate of need application."

19 SECTION 13. Section 323D-45, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "§323D-45 Subarea council, ~~[review panel,]~~ and statewide
22 council recommendations for issuance or denial of certificates

1 of need. (a) Except for an administrative review as provided in
2 section 323D-44.5, or in an emergency situation or other unusual
3 circumstances as provided in section 323D-44(c), the state
4 agency shall refer every application for a certificate of need
5 to ~~[the appropriate subarea council or councils, the review~~
6 ~~panel, and]~~ the statewide council and the appropriate subarea
7 council. The ~~[subarea]~~ statewide council ~~[and the review panel]~~
8 shall consider all relevant data and information submitted by
9 the state agency, ~~[subarea councils,]~~ other areawide or local
10 bodies, and the applicant, and may request from them additional
11 data and information. ~~[The review panel shall consider each~~
12 ~~application at a public meeting and shall submit its~~
13 ~~recommendations with findings to the statewide council.]~~ The
14 ~~[statewide]~~ subarea council shall consider the recommendation of
15 the ~~[review panel]~~ statewide council at a public meeting and
16 shall submit its recommendations to the state agency within such
17 time as the state agency prescribes. The statewide council and
18 the ~~[review panel]~~ subarea council may join together to hear or
19 consider simultaneously information related to an application
20 for a certificate of need.

21 (b) At a public meeting in which a ~~[subarea]~~ statewide or
22 subarea council ~~[or the review panel]~~ considers an application

1 for a certificate of need, any person shall have the right to be
2 represented by counsel and to present oral or written arguments
3 and evidence relevant to the application; any person directly
4 affected by the application may conduct reasonable questioning
5 of persons who make factual allegations relevant to the
6 application; any staff member of the state agency may conduct
7 reasonable questioning of persons who make factual allegations
8 relevant to the application; and a record of the meeting shall
9 be kept."

10 SECTION 14. Section 323D-47, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "§323D-47 Request for reconsideration. (a) The state agency
13 may provide by rules adopted in conformity with chapter 91 for a
14 procedure by which any person may, for good cause shown, request
15 in writing a public hearing before a reconsideration committee
16 for purposes of reconsideration of the agency's decision. The
17 reconsideration committee shall consist of the administrator of
18 the state agency, ~~[and] the [chairpersons]~~ chairperson of the
19 statewide council, ~~[the review panel, the plan development~~
20 ~~committee of the statewide council,]~~ and the chair and vice
21 chairs of the appropriate subarea health planning council. The
22 administrator shall be the chairperson of the reconsideration

1 committee. A request for a public hearing shall be deemed by
2 the reconsideration committee to have shown good cause, if:

- 3 (1) It presents significant, relevant information not
4 previously considered by the state agency;
- 5 (2) It demonstrates that there have been significant
6 changes in factors or circumstances relied upon by the
7 state agency in reaching its decision;
- 8 (3) It demonstrates that the state agency has materially
9 failed to follow its adopted procedures in reaching
10 its decision;
- 11 (4) It provides such other bases for a public hearing as
12 the state agency determines constitutes good causes;
- 13 or
- 14 (5) The decision of the administrator differs from the
15 recommendations of the [~~statewide~~] subarea council.

16 (b) To be effective a request for such a hearing shall be
17 received within [~~ten working~~] thirty calendar days of the state
18 agency decision. A decision of the reconsideration committee
19 following a public hearing under this section shall be
20 considered a decision of the state agency for purposes of
21 section 323D-44.

1 (c) The public hearing on a request for reconsideration
2 shall be held on the island where the facility is to be built or
3 the service is to be rendered."

4 SECTION 15. Section 323D-49, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "§323D-49 Certificates of need; licenses and permits. (a)
7 [No] Where a certificate of need is required pursuant to section
8 323D-43, no permit or license shall be issued by any county or
9 state officer for the development, construction, expansion,
10 alteration, conversion, initiation, or modification [of a health
11 care facility or health care service] other than [an existing
12 hospital, or for the operation of a new health care facility or
13 health care service] an emergency room, freestanding emergency
14 care facility, or surface ambulance service unless there is
15 submitted in connection with the application for such permit or
16 license a current certificate of need issued by the state agency
17 [or a statement issued by the state agency that the health care
18 facility or health care service is not required to hold a
19 certificate of need under this part.].

20 (b) [No] When a certificate of need is required under this
21 chapter, no building permit shall be issued by any county or
22 state officer for the development, construction, expansion,

1 alteration, conversion, initiation, or modification of [an
2 ~~existing hospital unless there is submitted in connection with~~
3 ~~the application for such building permit a current certificate~~
4 ~~of need issued by the state agency or a statement issued by the~~
5 ~~state agency that the existing hospital is not required to hold~~
6 ~~a certificate of need under this part.] an emergency room,
7 freestanding emergency care facility, or surface ambulance
8 unit."~~

9 SECTION 16. Section 323D-50, Hawaii Revised Statutes, is
10 amended by amending subsection (b) to read as follows:

11 "(b) Any license to operate a [~~health facility~~] surface
12 ambulance service or emergency room may be revoked or suspended
13 by the department of health at any time in a proceeding before
14 the department for any person proceeding with an action covered
15 under section 323D-43 without a certificate of need. If any
16 such license is revoked or suspended by the department, the
17 holder of the license shall be notified in writing by the
18 department of the revocation or suspension. [~~Any license to~~
19 ~~operate a health facility that has been revoked under this~~
20 ~~section shall not be restored except by action of the~~
21 ~~department.] "~~

1 SECTION 17. Section 323D-42, Hawaii Revised Statutes, is
2 repealed.

3 ~~["§323D-42 Review panel. There is established a review~~
4 ~~panel for the purposes of reviewing applications for~~
5 ~~certificates of need. The review panel shall be appointed by~~
6 ~~the statewide council. The review panel shall include at least~~
7 ~~one member from each county and a majority of the members shall~~
8 ~~be consumers. Membership on the statewide council shall not~~
9 ~~preclude membership on the review panel established in this~~
10 ~~section. "]~~

11 SECTION 18. Section 323D-54, Hawaii Revised Statutes is
12 repealed.

13 ~~["§323D-54 Exemptions from certificate of need~~
14 ~~requirements. Nothing in this part or rules with respect to the~~
15 ~~requirement for certificates of need applies to:~~

16 ~~(1) Offices of physicians, dentists, or other~~
17 ~~practitioners of the healing arts in private practice~~
18 ~~as distinguished from organized ambulatory health care~~
19 ~~facilities, except in any case of purchase or~~
20 ~~acquisition of equipment attendant to the delivery of~~
21 ~~health care service and the instruction or supervision~~

S.B. NO. 1436

- 1 ~~for any private office or clinic involving a total~~
2 ~~expenditure in excess of the expenditure minimum;~~
- 3 ~~(2) Laboratories, as defined in section 321-11(12), except~~
4 ~~in any case of purchase or acquisition of equipment~~
5 ~~attendant to the delivery of health care service and~~
6 ~~the instruction or supervision for any laboratory~~
7 ~~involving a total expenditure in excess of the~~
8 ~~expenditure minimum;~~
- 9 ~~(3) Dispensaries and first aid stations located within~~
10 ~~business or industrial establishments and maintained~~
11 ~~solely for the use of employees; provided such~~
12 ~~facilities do not regularly provide inpatient or~~
13 ~~resident beds for patients or employees on a daily~~
14 ~~twenty four hour basis;~~
- 15 ~~(4) Dispensaries or infirmaries in correctional or~~
16 ~~educational facilities;~~
- 17 ~~(5) Dwelling establishments, such as hotels, motels, and~~
18 ~~rooming or boarding houses that do not regularly~~
19 ~~provide health care facilities or health care~~
20 ~~services;~~
- 21 ~~(6) Any home or institution conducted only for those who,~~
22 ~~pursuant to the teachings, faith, or belief of any~~

- 1 ~~group, depend for healing upon prayer or other~~
2 ~~spiritual means;~~
- 3 ~~(7) Dental clinics;~~
- 4 ~~(8) Nonpatient areas of care facilities such as parking~~
5 ~~garages and administrative offices;~~
- 6 ~~(9) Bed changes that involve ten per cent or ten beds of~~
7 ~~existing licensed bed types, whichever is less, of a~~
8 ~~facility's total existing licensed beds within a two-~~
9 ~~year period;~~
- 10 ~~(10) Projects that are wholly dedicated to meeting the~~
11 ~~State's obligations under court orders, including~~
12 ~~consent decrees, that have already determined that~~
13 ~~need for the projects exists;~~
- 14 ~~(11) Replacement of existing equipment with its modern day~~
15 ~~equivalent;~~
- 16 ~~(12) Primary care clinics under the expenditure thresholds~~
17 ~~referenced in section 323D-2;~~
- 18 ~~(13) Equipment and services related to that equipment, that~~
19 ~~are primarily invented and used for research purposes~~
20 ~~as opposed to usual and customary diagnostic and~~
21 ~~therapeutic care;~~
- 22 ~~(14) Capital expenditures that are required.~~

S.B. NO. 1436

1 ~~(A) To eliminate or prevent imminent safety hazards~~
2 ~~as defined by federal, state, or county fire,~~
3 ~~building, or life safety codes or regulations;~~

4 ~~(B) To comply with state licensure standards;~~

5 ~~(C) To comply with accreditation standards,~~
6 ~~compliance with which is required to receive~~
7 ~~reimbursements under Title XVIII of the Social~~
8 ~~Security Act or payments under a state plan for~~
9 ~~medical assistance approved under Title XIX of~~
10 ~~such Act;~~

11 ~~(15) Extended care adult residential care homes and~~
12 ~~assisted living facilities; or~~

13 ~~(16) Other facilities or services that the agency through~~
14 ~~the statewide council chooses to exempt, by rules~~
15 ~~pursuant to section 323D-62.~~

16 SECTION 19. Chapter 323D, Part VII, Hawaii Revised
17 Statutes, is repealed.

18 ~~["PART VII.] HOSPITAL ACQUISITION~~

19 ~~§323D-71 Definitions. For the purpose of this part, unless~~
20 ~~the context requires otherwise:~~

21 ~~"Acquisition" means any acquisition by a person or persons~~
22 ~~of an ownership or controlling interest in a hospital, whether~~

1 ~~by purchase, merger, lease, gift, or otherwise, that results in~~
2 ~~a change of ownership or control of twenty per cent or greater~~
3 ~~or which results in the acquiring person or persons holding a~~
4 ~~fifty per cent or greater interest in the ownership or control~~
5 ~~of that hospital.~~

6 ~~"Agency" means the state health planning and development~~
7 ~~agency.~~

8 ~~"Hospital" means an institution with an organized medical~~
9 ~~staff, regulated under section 321-11(10) which admits patients~~
10 ~~for inpatient care, diagnosis, observation, and treatment, but~~
11 ~~does not include a public health facility under chapter 323F.~~

12 ~~"Person" has the meaning found in section 323D-2.~~

13 ~~§323D-72 Acquisition of hospital. (a) No person shall~~
14 ~~engage in the acquisition of a hospital without first:~~

15 ~~(1) Applying for and receiving the approval of the agency;~~

16 ~~and~~

17 ~~(2) Notifying the attorney general and, if applicable,~~
18 ~~receiving approval from the attorney general pursuant~~
19 ~~to this part.~~

20 ~~(b) Any person not required to obtain the approval of the~~
21 ~~agency under this part shall give the attorney general at least~~
22 ~~ninety days prior notice of an impending acquisition, during~~

1 ~~which time the attorney general may take any necessary and~~
2 ~~appropriate action consistent with general duties of oversight~~
3 ~~with regard to the conduct of charities, if applicable. The~~
4 ~~notice shall briefly describe the impending acquisition,~~
5 ~~including any change in ownership of tangible or intangible~~
6 ~~assets.~~

7 ~~(c) The application shall be submitted to the agency and~~
8 ~~the attorney general on forms provided by the agency and shall~~
9 ~~include:~~

- 10 ~~(1) The name of the seller, the name of the purchaser, and~~
11 ~~the names of other parties to an acquisition;~~
12 ~~(2) The terms of the proposed agreement;~~
13 ~~(3) The sale price;~~
14 ~~(4) A copy of the acquisition agreement;~~
15 ~~(5) A financial and economic analysis and report from an~~
16 ~~independent expert or consultant of the effect of the~~
17 ~~acquisition under the criteria set forth in section~~
18 ~~323D-76; and~~
19 ~~(6) All other related documents.~~

20 ~~A copy of the application and copies of all additional related~~
21 ~~materials shall be submitted to the agency and to the attorney~~

1 ~~general at the same time. The applications and all related~~
2 ~~documents shall be considered government records.~~

3 ~~[§323D-73] Notice, procedures. (a) Within five working~~
4 ~~days after receipt of a complete application under section 323D-~~
5 ~~72, the agency shall give public notice of the application in~~
6 ~~the affected county or counties where the hospital is located~~
7 ~~and shall notify by first class mail any person who has~~
8 ~~requested notice of the filing of such applications. The public~~
9 ~~notice shall state that a completed application has been~~
10 ~~received, state the names of the parties to the agreement,~~
11 ~~describe the contents of the application, and state the date by~~
12 ~~which a person may submit written comments about the application~~
13 ~~to the agency.~~

14 ~~(b) Within ninety days after receiving a complete~~
15 ~~application, the agency shall review the application in~~
16 ~~accordance with the standards set forth in this part and approve~~
17 ~~or disapprove the acquisition.~~

18 ~~Within twenty days after receiving a complete application,~~
19 ~~the attorney general shall determine whether a review of the~~
20 ~~application in accordance with section 323D-76 is appropriate~~
21 ~~and notify the applicant if a review is warranted. If the~~
22 ~~attorney general determines that a review is unnecessary or not~~

1 ~~appropriate, then none of the other provisions of this part~~
2 ~~applicable to review by the attorney general shall apply.~~

3 ~~(c) For acquisitions which require approval from the~~
4 ~~agency under this part and a certificate of need, the applicant~~
5 ~~shall submit a single application for both purposes and the~~
6 ~~application shall be reviewed under a single unified review~~
7 ~~process by the agency. Following the single unified review~~
8 ~~process, the agency shall simultaneously issue its decision~~
9 ~~regarding the certificate of need and its decision for purposes~~
10 ~~of the sale of a hospital under this part.~~

11 ~~[\$323D 74] Hearings. (a) The agency, after consultation~~
12 ~~with the attorney general, shall, if appropriate, hold a public~~
13 ~~hearing during the course of review, which hearing may be held~~
14 ~~jointly with the certificate of need review panel or the~~
15 ~~statewide health coordinating council, and in which any person~~
16 ~~may file written comments and exhibits or appear and make a~~
17 ~~statement. The agency or the attorney general may subpoena~~
18 ~~additional information or witnesses, require and administer~~
19 ~~oaths, require sworn statements, take depositions, and use~~
20 ~~related discovery procedures for purposes of the hearing and at~~
21 ~~any time prior to making a decision on the application.~~

1 ~~(b) The hearing shall be held no later than sixty days~~
2 ~~after receipt of a complete application. The hearing shall be~~
3 ~~held upon ten working days notice, not including days the~~
4 ~~application is deemed to be incomplete.~~

5 ~~[\$323D 75] Review, decision, rules. (a) The attorney~~
6 ~~general shall conduct its review of the application in~~
7 ~~accordance with the standards enumerated in section 323D 76.~~
8 ~~Within ninety days after receipt of an application, the attorney~~
9 ~~general shall review and approve or disapprove the acquisition.~~

10 ~~(b) If the attorney general does not act within ninety~~
11 ~~days after receipt of an application, the application shall be~~
12 ~~deemed approved. If the attorney general approves or~~
13 ~~disapproves the acquisition, the applicant, or any person who~~
14 ~~has submitted comments and has a legal interest in the hospital~~
15 ~~being acquired or in another hospital that has contracted with~~
16 ~~the acquired hospital for the provision of essential health~~
17 ~~services, may bring an action for declaratory judgment for a~~
18 ~~determination that the acquisition is or is not in the public~~
19 ~~interest under the criteria set forth in section 323D 76.~~

20 ~~(c) The agency shall review the completed application in~~
21 ~~accordance with the standards enumerated in section 323D 77.~~

1 ~~Within ninety days after receipt of a completed application, the~~
2 ~~agency shall:~~

3 ~~(1) Approve the acquisition, with or without any specific~~
4 ~~modifications; or~~

5 ~~(2) Disapprove the acquisition.~~

6 ~~The agency shall not make its decision subject to any condition~~
7 ~~not directly related to criteria enumerated in section 323D 77,~~
8 ~~and any condition or modification shall bear a direct and~~
9 ~~rational relationship to the application under review.~~

10 ~~(d) Any affected person may appeal a final decision by the~~
11 ~~agency to the reconsideration committee created under section~~
12 ~~323D 47 under procedures substantially similar to those for~~
13 ~~appeals of health care certificate of need decisions. The~~
14 ~~reconsideration committee shall have the same powers and duties~~
15 ~~with respect to appeals under this part as exist for appeals to~~
16 ~~the reconsideration committee regarding issuance of certificates~~
17 ~~of need. The findings, conclusions, and decisions of the~~
18 ~~reconsideration committee shall constitute the determination of~~
19 ~~the agency. The agency, the applicant, or any affected person~~
20 ~~who has intervened in the matter before the reconsideration~~
21 ~~committee may seek judicial review of any agency determination.~~

1 ~~(c) If both the agency and the attorney general review the~~
2 ~~application, it shall not be granted unless it is approved by~~
3 ~~both.~~

4 ~~§323D-76 Acquisition in the public interest, decision of~~
5 ~~attorney general. If the attorney general determines that a~~
6 ~~review of the application is appropriate, the attorney general~~
7 ~~shall approve the application unless the attorney general finds~~
8 ~~that the acquisition is not in the public interest. An~~
9 ~~acquisition of a private nonprofit hospital is not in the public~~
10 ~~interest unless appropriate steps have been taken to safeguard~~
11 ~~the value of charitable assets and ensure that any proceeds of~~
12 ~~the transaction are used for appropriate charitable health care~~
13 ~~purposes as provided in paragraph (8). In determining whether~~
14 ~~the acquisition meets such criteria, the attorney general shall~~
15 ~~consider, as applicable:~~

16 ~~(1) Whether the acquisition is permitted under chapter~~
17 ~~414D governing nonprofit entities, trusts, or~~
18 ~~charities,~~

19 ~~(2) Whether the hospital acted in a duly diligent manner~~
20 ~~in deciding to sell, selecting the purchaser, and~~
21 ~~negotiating the terms and conditions of the sale,~~

- 1 ~~(3) The procedures used by the seller in making its~~
2 ~~decision, including whether appropriate expert~~
3 ~~assistance was used;~~
- 4 ~~(4) Whether all conflicts of interest were disclosed,~~
5 ~~including, but not limited to, conflicts of interest~~
6 ~~related to board members of, executives of, and~~
7 ~~experts retained by the seller, purchaser, or parties~~
8 ~~to the acquisition;~~
- 9 ~~(5) Whether the seller will receive reasonably fair value~~
10 ~~for its assets. The attorney general may employ, at~~
11 ~~the seller's expense, reasonably necessary expert~~
12 ~~assistance in making this determination;~~
- 13 ~~(6) Whether charitable funds are placed at unreasonable~~
14 ~~risk, if the acquisition is financed in part by the~~
15 ~~seller;~~
- 16 ~~(7) Whether any management contract under the acquisition~~
17 ~~is for reasonably fair value;~~
- 18 ~~(8) Whether the sale proceeds will be used for appropriate~~
19 ~~charitable health care purposes consistent with the~~
20 ~~seller's original purpose or for the support and~~
21 ~~promotion of health care in the affected community;~~

1 ~~and will be controlled as charitable funds independent~~
2 ~~of the purchaser or parties to the acquisition; and~~
3 ~~(9) Whether a right of first refusal to repurchase the~~
4 ~~assets by a successor nonprofit corporation or~~
5 ~~foundation has been retained, if the hospital is~~
6 ~~subsequently sold to, acquired by, or merged with~~
7 ~~another entity.~~

8 ~~[\$323D-77] Acquisition; decision by agency. In making a~~
9 ~~decision whether to approve or disapprove an application, the~~
10 ~~agency shall consider:~~

11 ~~(1) Whether sufficient safeguards are included to ensure~~
12 ~~that the affected community has continued access to~~
13 ~~affordable care;~~

14 ~~(2) Whether the purchaser and parties to the acquisition~~
15 ~~have made a commitment to provide health care to the~~
16 ~~disadvantaged, uninsured, and underinsured, and to~~
17 ~~provide benefits to the affected community to promote~~
18 ~~improved health care. Current and prior health care~~
19 ~~activities and funding for those activities by the~~
20 ~~seller or its successor nonprofit corporation or~~
21 ~~foundation may be considered in evaluating compliance~~
22 ~~with this commitment;~~

1 ~~(3) If health care providers will be offered the~~
2 ~~opportunity to invest or own an interest in the~~
3 ~~purchaser or a related entity to the purchaser; and~~

4 ~~(4) Whether procedures or safeguards are in place to avoid~~
5 ~~conflict of interest in patient referral and the~~
6 ~~nature of those procedures or safeguards.~~

7 ~~This section does not apply higher standards to hospitals~~
8 ~~covered by this part than those applicable to hospitals not~~
9 ~~covered by this part.~~

10 ~~§323D-78 Revocation; hearing. If the agency receives~~
11 ~~information indicating that the acquiring person is not~~
12 ~~fulfilling the commitment to the affected community under~~
13 ~~section 323D-77, the agency shall hold a hearing upon ten days~~
14 ~~notice to the affected parties. If after the hearing the agency~~
15 ~~determines that the information is true, the department may~~
16 ~~institute proceedings to revoke the license issued to the~~
17 ~~purchaser.~~

18 ~~§323D-79 Public interest. The attorney general shall~~
19 ~~have the authority to ensure compliance with commitments made~~
20 ~~pursuant to section 323D-77.~~

21 ~~§323D-80 License renewal. No license to operate a~~
22 ~~hospital may be issued or renewed by the department of health~~

1 ~~pursuant to this chapter, and a license which has been issued~~
2 ~~shall be subject to revocation or suspension, if:~~

3 ~~(1) There is an acquisition of a hospital without first~~
4 ~~having received the approval of the agency under this~~
5 ~~part;~~

6 ~~(2) There is an acquisition of a hospital without the~~
7 ~~approval of the attorney general, if the attorney~~
8 ~~general determines that a review of the application is~~
9 ~~appropriate under this part;~~

10 ~~(3) There is an acquisition of a hospital and the attorney~~
11 ~~general disapproves the acquisition and there is a~~
12 ~~judicial determination that the acquisition is not in~~
13 ~~the public interest; or~~

14 ~~(4) The hospital is not fulfilling its commitment under~~
15 ~~section 323D-77 or is not following procedures or~~
16 ~~safeguards required under section 323D-77(4).~~

17 ~~This section does not limit the right to a hearing or the~~
18 ~~right of appeal for a hospital from such decision.~~

19 ~~[§323D-81] Prior acquisitions. Any acquisition of a~~
20 ~~hospital before July 20, 1998 and any acquisition in which an~~
21 ~~application for a certificate of need has been granted by the~~
22 ~~agency before July 20, 1998 is not subject to this part.~~

SB1436

JUSTIFICATION SHEET

DEPARTMENT: Office of the Governor

TITLE: RELATING TO ACCESS TO HEALTH CARE

PURPOSE: To amend chapter 323D, HRS, to emphasize that the primary objectives and purpose of SHPDA should be to promote access to quality health care by encouraging existing health care providers to expand their businesses and by stimulating outside health care providers to begin offering their services in Hawaii and to amend the current certificate of need ("CON") requirement under chapter 323D, Hawaii Revised Statutes ("HRS") to: (1) reverse the order that the county and State councils hold hearings and make recommendations on CON applications (so that the county council hears the matter last) and provide that, where the recommendations of the State council and the county council conflict, the State Planning and Development Agency ("SHPDA") Administrator shall give greater weight to the recommendation of the county council; (2) require that a hearing on a request for reconsideration from the denial of a CON be held on the island where the proposed medical facility is to be built or the medical activity is to occur; and (3) specify and narrow the types of medical facilities and medical activities that require a CON.

MEANS: Add a new section to chapter 323D, amend sections 323D-1, 2, 12, 14, 18, 22, 43, 44, 44.5, 44.6, 45, 47, 49, and 50, and repeal section 343D-42 and 54 and Part VII of chapter 323D.

JUSTIFICATION: This bill amends chapter 323D, HRS, to emphasize the "development" responsibility of SHPDA so that SHPDA focus more time and

resources to enhance access to quality health care within this State.

Currently, chapter 323D, HRS, mandates that health care providers must seek a CON from the SHPDA if they wish (1) to begin offering most types of health care services; (2) to end rendering most types of health care services; (3) to provide such services at a different location; or (4) to construct any type of medical or health facility.

Pursuant to Hawaii Administrative Rules that were adopted by SHPDA, HAR §11-186-6, any health care entity must obtain a CON from the SHPDA if the entity wishes to add or delete any of the following services and/or if the entity wishes to change the location at which it offers such services:

- Acute Hospital Bed Services (including Medical/Surgical, Obstetrical, Pediatrics, Acute/long term swing, Neonatal Intensive Care, Critical Care, or Psychiatric services);
- Long-Term Bed Services (including Psychiatric, Rehabilitation, Skilled Nursing Facility (SNF), Intermediate Care Facility (ICF), Children's Orthopedics, Rehabilitation, Special Treatment Care Home Facility, Bed Services for Persons with Hansen's Disease, Tuberculosis, or Mental Retardation (MR), SNF/ICF, or ICF/MR);
- Special Services (including Renal Dialysis, Cardiac Catheterization, Burn Center, Neurosurgery Burn Center, Heart Surgery, Transplant Surgery, Radiation Therapy, and Hospice);
- Outpatient Clinics;
- Emergency Rooms (including Free-Standing Emergency Care Facilities);
- Outpatient Surgical Centers;
- Diagnostic Radiological Centers (including Computed Tomography both Stationary and

SB 1436

Mobile; and Magnetic Resonance Imaging both Stationary and Mobile);

- Nuclear Medicine;
- Ultrasound;
- Clinical Laboratory;
- Pharmacy;
- Social Services;
- Home Health Agency;
- Drug and/or Alcohol Rehabilitation or a Comprehensive Outpatient Rehabilitation Facility;
- Extracorporeal Shock Wave Lithotripsy (ESWL)
- Recompression Center;
- Mental Health Center;
- Family Planning Clinics, Prenatal Clinics, Abortion Clinics, or Birthing Centers; and
- Surface Ambulance, Fixed Wing Air Ambulance, or Helicopter Air Ambulance.

Hawaii as well as other states originally enacted CON statutes when federal law provided incentives for states with CON requirements. CON programs were developed in the 1960s and 1970s in an attempt to keep down the costs of health care through federal and state regulation of the health care industry at a time when the primary funding method of health care was "fee for service."

In 1986, Congress repealed the federal law which provided for federal incentives for states to maintain CON programs.

Analysis of CON programs by the United States Federal Trade Commission, the United States Department of Justice, and other private experts have led to the following conclusions regarding CON programs:

- CON programs have failed to produce lower health care costs.

SBI436

- To the contrary, CON programs are anti-competitive and have acted as barriers to entry for health care providers, and have led to higher health care costs.
- CON programs have stifled innovation in health care delivery.
- CON programs lower the quality of care for patients, limit patient choice among health care providers, and reduce patient access among health care providers.

In addition, the health care industry has changed dramatically in the decades since the original adoption of the CON programs. First, the industry has kept down costs through other means, such as a shift to managed care. Second, changing demographics have led to greater demand for health care infrastructure. More health care capacity is needed (1) due to the aging of the "baby boom" generation; (2) because people are living longer; and (3) because innovation in the health care industry has led to greater treatment options and demand for access to these new medical technologies.

For the foregoing reasons, key states have repealed their CON statutes, including Arizona, California, Colorado, Idaho, Kansas, Minnesota, New Mexico, Ohio, South Dakota, Texas, Utah, and Wyoming. These repeals of CON statutes have occurred between 1983 and 1995. Other states, such as Florida, have amended their CON programs. Studies of these states that have repealed their CON requirements have revealed no substantial increase in health care costs.

In recent months, the deficiency of Hawaii's CON program has become more evident. A private entity that wished to build a new, state-of-the-art hospital on the island of Maui that was solely funded by private funds was denied a CON. The CON was denied in spite of overwhelming support for the project by the State's Governor, the mayor

SB 1436

of Maui, medical professionals, and the citizens of Maui County.

The proposed new medical facility that was to be built on Maui, but that was denied a CON, was to be named the Malulani Health & Medical Center, L.L.C. ("Malulani project").

Following hearings on the CON application for the Malulani project, the local county council--the Tri-Isle Subarea Health Planning Council-- recommended granting the CON. This county council held hearings on the island of Maui where more Maui residents would have an opportunity to testify regarding the CON application.

However, the state council--the Statewide Health Coordinating Council, which operates on Oahu-- recommended that the CON for the Malulani project be denied.

The SHPDA Administrator denied a CON for the Malulani project (in conformity with the recommendations of the State council) and rejected the opinion of the local planning council.

Given the foregoing, this bill proposes the following revisions to chapter 323D, HRS:

- I. Reversing the order that the State and county councils consider a CON application, deleting the review panel, and giving greater weight to the county council's decision.

Particularly for the neighbor islands, the council in the best position to know of the medical needs of the county, is the county council. Chapter 323D, HRS, is amended (1) to reverse the order that the State and county councils hold hearings on CON applications; and (2) to require that the SHPDA Administrator give greater weight to the county council's recommendation where it

SB 1436

conflicts with the State council's recommendation.

First, and unlike the State council, the members of a county council, as residents of the county, have better knowledge as to the types of medical facilities and medical services are needed for that county. Second, because the county councils hold hearings on the island where the medical facility is to be built or medical service is to be rendered, more members of the public and other stakeholders have an opportunity to comment on the proposed medical facility/service.

II. Requiring that Hearing on a Request for Reconsideration from the Denial of a CON be held on the island where the medical facility is to be built.

Where a CON for a new facility is denied, but a hearing on the applicant's request for reconsideration is granted, this proposal will amend chapter 323D, HRS, to require that the hearing be held on the island where the new facility/ activity will be based. This revision is proposed for the same reasons as the revisions set forth above (e.g., it will allow more affected persons to testify; and the county council members will be more likely to be aware of the counties' need (or lack thereof) for health care providers/facilities).

III. Narrowing the Scope of the CON requirement.

This bill proposes to limit the scope of the CON requirement under chapter 323D, HRS, to require a CON solely for (1) emergency rooms (including freestanding emergency care facilities); and (2) surface ambulance services. All other medical facilities and medical activities that are currently

required under HAR § 11-186-6 to obtain a CON will no longer be required to seek a CON.

CONs will still be required for emergency rooms and freestanding emergency care facilities to determine the impact these facilities may have on Critical Access Hospital designations for nearby facilities and the financial obligations these emergency care facilities may place on the State. Surface ambulance services will also be required to obtain a CON because of the fiscal impact these services may have on the State.

Impact on the public: Access to health care in Hawaii will be improved. Existing health care providers will be able to expand their operations more easily with the deregulation of this industry. By eliminating the artificial barriers to entry of Hawaii's health care market, more health care providers will be attracted to open business in this State. Economies of scale will be realized from collaborative ventures among health care providers where such collaboration makes economic sense.

Impact on the department and other agencies: By emphasizing SHPDA's role as a developer of the State's health care capacity, SHPDA will become more involved in enlarging the health care capacity in this State. These revisions with regard to CONs will reduce the workload of SHPDA, thus allowing SHPDA to focus on emergency care needs. The Department of Health would continue its oversight role of health facilities as the Department exercises now. Hawaii Health Systems Corporation would have additional opportunities to partner with health care providers.

GENERAL FUND:

No direct impact on the general fund.

SB 1436

OTHER FUNDS: The amount in the State Health Planning and Development Special Fund will be reduced. Currently, the CON application fees are deposited into this special fund. (HRS §323D-12.6).

PPBS PROGRAM DESIGNATION: None.

OTHER AFFECTED AGENCIES: Department of Health; State Health Planning and Development Agency; Statewide Health Coordinating Council; Honolulu Subarea Health Planning Council; West Oahu Subarea Health Planning Council; Windward Oahu Subarea Health Planning Council; Hawaii County Subarea Health Planning Council; Kauai Subarea Health Planning Council; Tri-Isle Subarea Health Planning Council; Hawaii Health Systems Corporation.

EFFECTIVE DATE: Upon approval.