

JAN 18 2008

A BILL FOR AN ACT

RELATING TO CERTIFICATE OF NEED.

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

1 SECTION 1. The purpose of this Act is effectuate the
2 recommendations of the Maui Health Initiative Task Force
3 established pursuant to Act 219, Session Laws of Hawaii 2007, to
4 create procedural efficiency in the certificate of need
5 application process by eliminating the statewide health planning
6 council and the review panel, and by renaming the subarea health
7 planning councils to regional health planning councils.

8 SECTION 2. Section 323D-2, Hawaii Revised Statutes, is
9 amended by deleting the definitions of "statewide council" and
10 "review panel":

11 ~~["Review panel" means the panel established pursuant to~~
12 ~~section 323D-42.~~

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

15 SECTION 3. Section 323D-12, Hawaii Revised Statutes, is
16 amended to read as follows:



1 "§323D-12 Health planning and development functions; state

2 agency. (a) The state agency shall:

3 (1) Have as a principal function the responsibility for
4 promoting accessibility for all the people of the
5 State to quality health care services at reasonable
6 cost. The state agency shall conduct such studies and
7 investigations as may be necessary as to the causes of
8 health care costs including inflation. The state
9 agency may contract for services to implement this
10 paragraph. The certificate of need program mandated
11 under part V shall serve this function. The state
12 agency shall promote the sharing of facilities or
13 services by health care providers whenever possible to
14 achieve economies and shall restrict unusual or
15 unusually costly services to individual facilities or
16 providers where appropriate;

17 (2) Serve as staff to and provide technical assistance and
18 advice to the [~~statewide council and the subarea~~]
19 regional health planning councils in the preparation,
20 review, and revision of the state health services and
21 facilities plan[+], and may, when deemed necessary by
22 the state agency, retain a non-voting advisory panel



1 of unbiased experts to provide additional expertise
2 and assistance;

3 (3) Conduct the health planning activities of the State in
4 coordination with the [~~subarea~~] regional health
5 planning councils, implement the state health services
6 and facilities plan, and determine the statewide
7 health needs of the State after consulting with the
8 [~~statewide council;~~] regional health planning
9 councils; and

10 (4) Administer the state certificate of need program
11 pursuant to part V.

12 (b) The state agency may:

13 (1) Prepare such reports and recommendations on Hawaii's
14 health care costs and public or private efforts to
15 reduce or control costs and health care quality as it
16 deems necessary. The report may include, but not be
17 limited to, a review of health insurance plans, the
18 availability of various kinds of health insurance and
19 malpractice insurance to consumers, and strategies for
20 increasing competition in the health insurance
21 field[+];



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



1 care rationing, involuntary care, care for the

2 indigent, and standards for research and development

3 of biotechnology and genetic engineering[-]; and

4 (9) Conduct such other activities as are necessary to meet

5 the purposes of this chapter."

6 SECTION 4. Section 323D-13, Hawaii Revised Statutes, is

7 repealed.

8 ["§323D-13 Statewide health coordinating council. (a)

9 there is established a statewide health coordinating council

10 which shall be advisory to the state agency and the membership

11 of which as appointed by the governor shall not exceed twenty

12 members-

13 (b) The members of the statewide council shall be

14 appointed by the governor in accordance with section 26-34,

15 provided that a nonvoting, ex officio member who is the

16 representative of the Veterans' Administration shall be

17 designated by the Veterans' Administration. The membership of

18 the statewide council shall be broadly representative of the

19 age, sex, ethnic, income, and other groups that make up the

20 population of the state and shall include representation from

21 the subarea councils, business, labor, and health care

22 providers. A majority but not more than eleven of the members



1 ~~shall be consumers of health care who are not also providers of~~
2 ~~health care.~~

3 ~~(c) The statewide council shall select a chairperson from~~
4 ~~among its members. The members of the statewide council shall~~
5 ~~not be compensated but shall be reimbursed for necessary~~
6 ~~expenses incurred in the performance of their duties.~~

7 ~~(d) The number of members necessary to constitute a quorum~~
8 ~~to do business shall consist of a majority of all members who~~
9 ~~have accepted nomination to the council, and have been confirmed~~
10 ~~and qualified as members of the council. When a quorum is in~~
11 ~~attendance, the concurrence of a majority of the members in~~
12 ~~attendance shall make any action of the council valid.~~

13 ~~(e) No member of the statewide council shall, in the~~
14 ~~exercise of any function of the statewide council described in~~
15 ~~section 323D 14(3), vote on any matter before the statewide~~
16 ~~council respecting any individual or entity with which the~~
17 ~~member has or, within the twelve months preceding the vote, had~~
18 ~~any substantial ownership, employment, medical staff, fiduciary,~~
19 ~~contractual, creditor, or consultative relationship. The~~
20 ~~statewide council shall require each of its members who has or~~
21 ~~has had such a relationship with an individual or entity~~
22 ~~involved in any matter before the statewide council to make a~~



1 ~~written disclosure of the relationship before any action is~~
 2 ~~taken by the statewide council with respect to the matter in the~~
 3 ~~exercise of any function described in section 323D-14 and to~~
 4 ~~make the relationship public in any meeting in which the action~~
 5 ~~is to be taken."]~~

6 SECTION 5. Section 323D-13.5, Hawaii Revised Statutes, is
 7 amended to read as follows:

8 " ~~[+]§323D-13.5[+] Disqualification from position or~~
 9 ~~membership.~~ The chairpersons of the ~~[statewide council, the~~
 10 ~~subarea] regional~~ health planning councils ~~[and the review~~
 11 ~~panel,]~~ shall not be employed by or married to health care
 12 providers."

13 SECTION 6. Section 323D-14, Hawaii Revised Statutes, is
 14 repealed.

15 ~~["§323D-14 Functions, statewide health coordinating~~
 16 ~~council. The statewide council shall:~~

- 17 ~~(1) Prepare and revise as necessary the state health~~
 18 ~~services and facilities plan,~~
- 19 ~~(2) Advise the state agency on actions under section 323D-~~
 20 ~~12,~~
- 21 ~~(3) Appoint the review panel pursuant to section 323D-42,~~
 22 ~~and~~



1 ~~(4) Review and comment upon the following actions by the~~
2 ~~state agency before such actions are made final:~~

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

5 ~~(B) The making of findings as to the appropriateness~~
6 ~~of those institutional and noninstitutional~~
7 ~~health services offered in the State."]~~

8 SECTION 7. Section 323D-17, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "**§323D-17 Public hearings required.** In the preparation of
11 the state health services and facilities plan or amendments to
12 the state health services and facilities plan, the state agency
13 and the [~~statewide council~~] regional health planning councils
14 shall conduct a public hearing on the proposed plan or the
15 amendments and shall comply with the provisions for notice of
16 public hearings in chapters 91 and 92."

17 SECTION 8. Chapter 323D, part III, Hawaii Revised
18 Statutes, is amended by amending the title to read:

19 "**PART III. [SUBAREA] REGIONAL HEALTH PLANNING COUNCILS**"

20 SECTION 9. Section 323D-21, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§323D-21 [Subarea] Regional health planning councils,
2 established. (a) There are established[~~-, subarea~~] five
3 regional health planning councils [~~for~~] to represent each
4 ~~geographical areas which shall be designated by the state agency~~
5 ~~in consultation with the statewide council. Each county shall~~
6 ~~have at least one subarea health planning council.] region, as
7 follows:~~

- 8 (1) The Oahu regional health planning council;
 - 9 (2) The Kauai regional health planning council;
 - 10 (3) The Maui regional health planning council;
 - 11 (4) The east Hawaii regional health planning council,
12 comprising the Puna district, north Hilo district,
13 south Hilo district, Hamakua district, and Kau
14 district; and
 - 15 (5) The west Hawaii regional health planning council,
16 comprising the north Kohala district, south Kohala
17 district, north Kona district, and south Kona
18 district;
- 19 and to be identified as regional health planning councils I, II,
20 III, IV, and V, respectively.

21 (b) The [~~subarea~~] regional health planning councils shall
22 be placed within the state agency for administrative purposes."



1 SECTION 10. Section 323D-22, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§323D-22 [Subarea] Regional health planning councils,
4 functions, quorum and number of members necessary to take valid
5 action. (a) Each [subarea] regional health planning council
6 shall review, seek public input, and make recommendations
7 relating to health planning for the geographical [subarea]
8 region it serves. In addition, the [subarea] regional health
9 planning councils shall:

- 10 (1) Identify and recommend to the state agency [~~and the~~
11 ~~council~~] the data needs and special concerns of the
12 respective [subareas] regions with respect to the
13 preparation of the state plan[-];
14 (2) Provide specific recommendations to the state agency
15 [~~and the council~~] regarding the highest priorities for
16 health services and resources development[-];
17 (3) Review the state health services and facilities plan
18 as it relates to the respective [subareas] regions and
19 make recommendations to the state agency [~~and the~~
20 ~~council~~];



1 (4) Advise the state agency in the administration of the
2 certificate of need program for their respective
3 ~~[subareas-]~~ regions;

4 (5) Advise the state agency on the cost of reimbursable
5 expenses incurred in the performance of their
6 functions for inclusion in the state agency budget ~~[+]~~;

7 (6) Advise the state agency in the performance of its
8 specific functions ~~[+]~~; and

9 (7) Perform other such functions as agreed upon by the
10 state agency and the respective ~~[subarea]~~ regional
11 health planning councils.

12 ~~[(8) Each subarea health planning council shall recommend
13 for gubernatorial appointment at least one person from
14 its membership to be on the statewide council.]~~

15 (b) The number of members necessary to constitute a quorum
16 to do business shall consist of a majority of all the members
17 who have accepted nomination to the council, and have been
18 confirmed and qualified as members of the council. When a
19 quorum is in attendance, the concurrence of a majority of the
20 members in attendance shall make any action of the council
21 valid."



1 SECTION 11. Section 323D-23, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§323D-23 [Subarea] Regional health planning councils,
4 composition, appointment. Members of [subarea] the regional
5 health planning councils shall be appointed by the governor,
6 subject to section 26-34. Nominations for appointment shall be
7 solicited from health-related and other interested
8 organizations, and agencies, including health planning councils,
9 providers of health care within the appropriate [subarea]
10 region, and other interested persons. The members of the
11 regional health planning councils shall represent diverse levels
12 of related expertise to ensure comprehensive and sagacious
13 decision making. The members of the [subarea] regional health
14 planning councils shall not be compensated for their services
15 but shall be reimbursed for reasonable expenses necessary to the
16 performance of their function."

17 SECTION 12. Section 323D-42, Hawaii Revised Statutes, is
18 repealed.

19 [~~§323D-42 Review panel. There is established a review~~
20 ~~panel for the purposes of reviewing applications for~~
21 ~~certificates of need. The review panel shall be appointed by~~
22 ~~the statewide council. The review panel shall include at least~~



1 ~~one member from each county and a majority of the members shall~~
2 ~~be consumers. Membership on the statewide council shall not~~
3 ~~preclude membership on the review panel established in this~~
4 ~~section."]~~

5 SECTION 13. Section 323D-44, Hawaii Revised Statutes, is
6 amended to read as follows:

7 **"§323D-44 Applications for certificates of need.** (a) An
8 applicant for a certificate of need shall file an application
9 with the state agency. The state agency shall provide technical
10 assistance to the applicant in the preparation and filing of the
11 application.

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

17 The state agency shall not accept an application for review
18 until the application is complete and includes all necessary
19 information required by the state agency. The state agency
20 shall determine if the application is complete within thirty
21 days of receipt of the application. If the state agency
22 determines that the application is incomplete, the state agency



1 shall inform the applicant of the additional information that is
2 required to complete the application. When the state agency
3 determines that the application is complete, the period for
4 agency review described in subsection (b) shall begin, and the
5 state agency shall transmit the completed application to the
6 appropriate [subarea] regional health planning councils, [~~the~~
7 ~~review panel, the statewide council,~~] appropriate individuals,
8 and appropriate public agencies. The state agency may require
9 the applicant to provide copies of the application to the state
10 agency, the appropriate [subarea] regional health planning
11 councils, [~~the review panel, the statewide council,~~] appropriate
12 individuals, and appropriate public agencies. If, during the
13 period for agency review, the state agency requires the
14 applicant to submit information respecting the subject of the
15 review, the period for agency review shall, at the request of
16 the applicant, be extended fifteen days."

17 SECTION 14. Section 323D-44.6, Hawaii Revised Statutes, is
18 amended to read as follows:

19 " [+]§323D-44.6[+] **Review of certain applications for**
20 **certificate of need; waiver.** The [subarea] regional health
21 planning council [~~, the review panel, and the statewide council~~]
22 may, at [~~their~~] its discretion, choose to waive [~~their~~] its



1 respective prerogatives of review of any certificate of need
2 application."

3 SECTION 15. Section 323D-45, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§323D-45 [Subarea] Regional health planning council[~~7~~
6 ~~review panel, and statewide council~~] recommendations for
7 issuance or denial of certificates of need. (a) Except for an
8 administrative review as provided in section 323D-44.5, or in an
9 emergency situation or other unusual circumstances as provided
10 in section 323D-44(c), the state agency shall refer every
11 application for a certificate of need to the appropriate
12 [subarea] regional health planning council or councils [~~7, the~~
13 ~~review panel, and the statewide council~~]. The [subarea]
14 regional health planning council [~~and the review panel~~] shall
15 consider all relevant data and information submitted by the
16 state agency, [subarea] regional health planning councils, other
17 [~~areawide or~~] local bodies, and the applicant, and may request
18 from them additional data and information. The [~~review panel~~]
19 regional health planning council shall consider each application
20 at a public meeting and shall submit its recommendations with
21 findings to the [~~statewide council. The statewide council shall~~
22 ~~consider the recommendation of the review panel at a public~~



1 ~~meeting and shall submit its recommendations to the~~ state
2 agency within such time as the state agency prescribes. [The
3 ~~statewide council and the review panel may join together to hear~~
4 ~~or consider simultaneously information related to an application~~
5 ~~for a certificate of need.]~~

6 (b) At a public meeting in which a [~~subarea~~] regional
7 health planning council [~~or the review panel~~] considers an
8 application for a certificate of need, any person shall have the
9 right to be represented by counsel and to present oral or
10 written arguments and evidence relevant to the application; any
11 person directly affected by the application may conduct
12 reasonable questioning of persons who make factual allegations
13 relevant to the application; any staff member of the state
14 agency may conduct reasonable questioning of persons who make
15 factual allegations relevant to the application; and a record of
16 the meeting shall be kept."

17 SECTION 16. Section 323D-47, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§323D-47 Request for reconsideration.** The state agency
20 may provide by rules adopted in conformity with chapter 91 for a
21 procedure by which any person may, for good cause shown, request
22 in writing a public hearing before a reconsideration committee



1 for purposes of reconsideration of the agency's decision. The
2 reconsideration committee shall consist of the administrator of
3 the state agency and the [~~chairpersons of the statewide council,~~
4 ~~the review panel, the plan development committee of the~~
5 ~~statewide council, and~~] chairperson of the appropriate [subarea]
6 regional health planning council. The administrator shall be
7 the chairperson of the reconsideration committee. A request for
8 a public hearing shall be deemed by the reconsideration
9 committee to have shown good cause, if:

- 10 (1) It presents significant, relevant information not
11 previously considered by the state agency;
- 12 (2) It demonstrates that there have been significant
13 changes in factors or circumstances relied upon by the
14 state agency in reaching its decision;
- 15 (3) It demonstrates that the state agency has materially
16 failed to follow its adopted procedures in reaching
17 its decision;
- 18 (4) It provides such other bases for a public hearing as
19 the state agency determines constitutes good [causes+]
20 cause; or



1 (5) The decision of the administrator differs from the
2 recommendation of the [~~statewide~~] regional health
3 planning council.

4 To be effective a request for such a hearing shall be received
5 within ten working days of the state agency decision. A
6 decision of the reconsideration committee following a public
7 hearing under this section shall be considered a decision of the
8 state agency for purposes of section 323D-44."

9 SECTION 17. Section 323D-62, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§323D-62 Rules.** The state agency and the [~~statewide~~]
12 regional health [~~coordinating council~~] planning councils may
13 adopt necessary rules for the purposes of this chapter in
14 accordance with chapter 91."

15 SECTION 18. Section 323D-74, Hawaii Revised Statutes, is
16 amended by amending its title and subsection (a) to read as
17 follows:

18 "~~{~~ **§323D-74** ~~}~~ **Hearings.** (a) The agency, after
19 consultation with the attorney general, shall, if appropriate,
20 hold a public hearing during the course of review, which hearing
21 may be held jointly with the [~~certificate of need review panel~~]
22 state agency or the [~~statewide~~] appropriate regional health



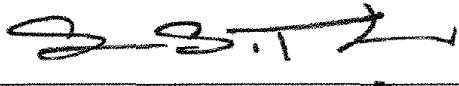
1 [~~coordinating~~] planning council, and in which any person may
2 file written comments and exhibits or appear and make a
3 statement. The agency or the attorney general may subpoena
4 additional information or witnesses, require and administer
5 oaths, require sworn statements, take depositions, and use
6 related discovery procedures for purposes of the hearing and at
7 any time prior to making a decision on the application."

8 SECTION 19. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 20. This Act shall take effect upon its approval.

11

INTRODUCED BY:


J. Kelly Gish
Assembly of Baker



Report Title:

Certificate of Need; Reorganization

Description:

Reorganizes the certificate of need process by eliminating the review panel and the statewide health coordinating council and by renaming the subarea health planning councils to regional health planning councils.

