

JAN 26 2009

S.B. NO. 1135

A BILL FOR AN ACT

RELATING TO HEALTH PLANNING.

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

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

3 1. By amending the definitions of "subarea" and "subarea
4 council" to read:

5 "[~~Subarea~~] Regional" means one of the geographic
6 [~~subareas~~] regions designated by the state agency pursuant to
7 section 323D-21.

8 [~~Subarea~~] Regional council" means a [~~subarea health~~
9 ~~planning~~] regional council established pursuant to section
10 323D-21."

11 2. By repealing the definitions of "review panel" and
12 "statewide council".

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

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

17 SECTION 2. Section 323D-12, Hawaii Revised Statutes, is
18 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[-] and
9 reimbursements to health care providers. The state
10 agency may contract for services to implement this
11 paragraph. The certificate of need program mandated
12 under part V shall serve this function. The state
13 agency shall promote the sharing of facilities or
14 services by health care providers whenever possible to
15 achieve economies [~~and shall restrict unusual or~~
16 ~~unusually costly services to individual facilities or~~
17 ~~providers where appropriate]~~;
18 (2) Serve as staff to and provide technical assistance and
19 advice to [~~the statewide council and~~] the [~~subarea~~]
20 regional councils in the preparation, review, and
21 revision of the state health services and facilities
22 plan;

- 1 (3) Conduct the health planning activities of the State in
2 coordination with the [~~subarea~~] regional councils,
3 implement the state health services and facilities
4 plan, and determine the statewide health needs of the
5 State after consulting with the [~~statewide council~~],
6 regional councils; and
- 7 (4) Administer the state certificate of need program
8 pursuant to part V.
- 9 (b) The state agency may:
- 10 (1) Prepare such reports and recommendations on Hawaii's
11 health care costs and public or private efforts to
12 reduce or control costs and health care quality as it
13 deems necessary. The report may include[~~7~~] but not be
14 limited to[~~7~~] a review of health insurance plans, the
15 availability of various kinds of health insurance and
16 malpractice insurance to consumers, and strategies for
17 increasing competition in the health insurance
18 field[~~7~~];
- 19 (2) Prepare and revise as necessary the state health
20 services and facilities plan[~~7~~];
- 21 (3) Prepare, review, and revise the annual implementation
22 plan[~~7~~];



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



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

3 SECTION 3. Section 323D-13.5, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "[+]§323D-13.5[+] Disqualification from position or
6 membership. The chairpersons of the [~~statewide council, the~~
7 ~~subarea health planning councils and the review panel,~~] regional
8 councils shall not be employed by or married to health care
9 providers."

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

12 "§323D-15 State health services and facilities plan.
13 There shall be a state health services and facilities plan
14 [~~which~~] prepared by the state agency that shall address the
15 health care needs of the State, including inpatient care, health
16 care facilities, including critical access hospitals, and
17 special needs. The plan shall depict the most economical and
18 efficient system of care commensurate with adequate quality of
19 care, and shall include standards for utilization of health care
20 facilities and major medical equipment. The plan shall provide
21 for the reduction or elimination of underutilized, redundant, or
22 inappropriate health care facilities and health care services[-]



1 and shall be submitted to the legislature on June 30 and
2 December 31 of each year."

3 SECTION 5. Section 323D-17, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§323D-17 **Public hearings required.** In the preparation of
6 the state health services and facilities plan or amendments to
7 the state health services and facilities plan, the state agency
8 and the [~~statewide council~~] regional councils shall conduct a
9 public hearing on the proposed plan or the amendments and shall
10 comply with the provisions for notice of public hearings in
11 chapters 91 and 92."

12 SECTION 6. Part III of chapter 323D, Hawaii Revised
13 Statutes, is amended by amending its title to read:

14 "PART III. [~~SUBAREA HEALTH PLANNING~~] REGIONAL COUNCILS"

15 SECTION 7. Section 323D-21, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "§323D-21 [~~Subarea health planning~~] Regional councils,
18 established. There are established, [~~subarea health planning~~]
19 regional councils for geographical [~~areas which~~] regions that
20 shall be designated by the state agency [~~in consultation with~~
21 ~~the statewide council~~]. Each county shall have at least one
22 [~~subarea health planning~~] regional council. The [~~subarea health~~



1 ~~planning]~~ regional councils shall be placed within the state
2 agency for administrative purposes."

3 SECTION 8. Section 323D-22, Hawaii Revised Statutes, is
4 amended by amending its title and subsection (a) to read as
5 follows:

6 "§323D-22 [~~Subarea health planning]~~ Regional councils,
7 functions, quorum and number of members necessary to take valid
8 action. (a) Each [~~subarea health planning]~~ regional council
9 shall review, seek public input, and make recommendations
10 relating to health planning for the geographical [~~subarea]~~
11 region it serves[-] and shall review and comment upon actions by
12 the state agency before these actions are made final in the
13 making of findings relating to applications for a certificate of
14 need. In addition, the [~~subarea health planning]~~ regional
15 councils shall:

16 (1) Identify and recommend to the state agency [~~and the~~
17 ~~council]~~ the data needs and special concerns of the
18 respective [~~subareas]~~ regions with respect to the
19 preparation of the state plan[-];

20 (2) Provide specific recommendations to the state agency
21 [~~and the council]~~ regarding the highest priorities for
22 health services and resources development[-];



1 (3) Review the state health services and facilities plan
2 as it relates to the respective [~~subareas~~] regions and
3 make 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.~~] regions;

8 (5) Advise the state agency on the cost of reimbursable
9 expenses incurred in the performance of their
10 functions for inclusion in the state agency budget[~~-~~];

11 (6) Advise the state agency in the performance of its
12 specific functions[~~-~~]; and

13 (7) Perform other such functions as agreed upon by the
14 state agency and the respective [~~subarea~~] regional
15 councils.

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

19 SECTION 9. Section 323D-23, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "§323D-23 [~~Subarea health planning~~] Regional councils,
22 composition, appointment. Members of [~~subarea health planning~~]



1 regional councils shall be appointed by the governor, subject to
2 section 26-34. Nominations for appointment shall be solicited
3 from health-related and other interested organizations, and
4 agencies, including health planning councils, providers of
5 health care within the appropriate [~~subarea~~₇] region, and other
6 interested persons. The members of the [~~subarea health~~
7 ~~planning~~] regional councils shall not be compensated for their
8 services but shall be reimbursed for reasonable expenses
9 necessary to the performance of their function."

10 SECTION 10. Section 323D-43, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "§323D-43 Certificates of need. (a) No person, public or
13 private, nonprofit or for profit, shall:

14 (1) Construct, expand, alter, convert, develop, initiate,
15 or modify a health care facility or health care
16 services in the State that requires a total capital
17 expenditure in excess of the expenditure minimum; or

18 (2) Substantially modify or increase the scope or type of
19 health service rendered; or

20 (3) Increase, decrease, or change the class of usage of
21 the bed complement of a health care facility, or



1 relocate beds from one physical facility or site to
2 another,
3 unless a certificate of need therefor has first been issued by
4 the state agency.

5 ~~[(b) No certificate of need shall be issued unless the~~
6 ~~state agency has determined that:~~

7 ~~(1) There is a public need for the facility or the~~
8 ~~service; and~~

9 ~~(2) The cost of the facility or service will not be~~
10 ~~unreasonable in the light of the benefits it will~~
11 ~~provide and its impact on health care costs.~~

12 ~~(e)]~~ (b) The state agency may adopt criteria for
13 certificate of need review ~~[which]~~ that are consistent with this
14 section. ~~[Such]~~ These criteria may include but are not limited
15 to need, cost, quality, accessibility, availability, and
16 acceptability.

17 Each decision of the state agency to issue a certificate of
18 need ~~[shall]~~, except in an emergency situation that poses a
19 threat to public health, shall be consistent with the state
20 health services and facilities plan in effect under section
21 323D-15. Each certificate of need issued shall be valid for a
22 period of one year from the date of issuance unless the period



1 is extended for good cause by the state agency and expenditures
2 for the project shall not exceed the maximum amount of the
3 expenditures approved in the certificate of need."

4 SECTION 11. Section 323D-44, Hawaii Revised Statutes, is
5 amended as follows:

6 1. By amending subsection (a) to read:

7 "(a) An applicant for a certificate of need shall file an
8 application with the state agency. The state agency shall
9 provide technical assistance to the applicant in the preparation
10 and filing of the application.

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

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



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

16 2. By amending subsection (d) to read:

17 "(d) Notwithstanding anything to the contrary in
18 subsections (a) and (b), the state agency may adopt rules in
19 conformity with chapter 91 providing that all completed
20 applications pertaining to similar types of services,
21 facilities, or equipment affecting the same health service



1 [area] region shall be considered in relation to each other but
2 no less often than twice a year."

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

5 " ~~[+] §323D-44.6 []~~ Review of certain applications for
6 certificate of need; waiver. The [subarea] regional council,
7 ~~[the review panel, and the statewide council may,]~~ at [their]
8 its discretion, may choose to waive ~~[their respective~~
9 ~~prerogatives]~~ its prerogative of review of any certificate of
10 need application."

11 SECTION 13. Section 323D-44.7, Hawaii Revised Statutes, is
12 amended to read as follows:

13 " ~~[+] §323D-44.7 []~~ Monitoring of approved certificates of
14 need. The state agency ~~[may]~~ shall monitor implementation of
15 approved certificates of need granted by the agency."

16 SECTION 14. Section 323D-45, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "§323D-45 [Subarea] Regional council ~~[, review panel, and~~
19 ~~statewide council]~~ recommendations for issuance or denial of
20 certificates of need. (a) Except for an administrative review
21 as provided in section 323D-44.5, or in an emergency situation
22 or other unusual circumstances as provided in section



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

18 (b) At a public meeting in which a [~~subarea~~] regional
19 council [~~or the review panel~~] considers an application for a
20 certificate of need [~~, any person shall~~]:



1 (1) Any person shall have the right to be represented by
2 counsel and to present oral or written arguments and
3 evidence relevant to the application; [any]

4 (2) Any person directly affected by the application may
5 conduct reasonable questioning of persons who make
6 factual allegations relevant to the application; [any]
7 and

8 (3) Any staff member of the state agency may conduct
9 reasonable questioning of persons who make factual
10 allegations relevant to the application; and

11 a record of the meeting shall be kept."

12 SECTION 15. Section 323D-47, Hawaii Revised Statutes, is
13 amended to read as follows:

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



1 ~~[subarea health planning]~~ regional council. The administrator
2 shall be the chairperson of the reconsideration committee. A
3 request for a public hearing shall be deemed by the
4 reconsideration committee to have shown good cause, if:

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

18 To be effective a request for such a hearing shall be received
19 within ten working days of the state agency decision. A
20 decision of the reconsideration committee following a public
21 hearing under this section shall be considered a decision of the
22 state agency for purposes of section 323D-44."



1 SECTION 16. Section 323D-54, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§323D-54 Exemptions from certificate of need
4 requirements. Nothing in this part or rules with respect to the
5 requirement for certificates of need applies to:

6 (1) Offices of physicians, dentists, or other
7 practitioners of the healing arts in private practice
8 as distinguished from organized ambulatory health care
9 facilities, except in any case of purchase or
10 acquisition of equipment attendant to the delivery of
11 health care service and the instruction or supervision
12 for any private office or clinic involving a total
13 expenditure in excess of the expenditure minimum;

14 (2) Laboratories, as defined in section 321-11(12), except
15 in any case of purchase or acquisition of equipment
16 attendant to the delivery of health care service and
17 the instruction or supervision for any laboratory
18 involving a total expenditure in excess of the
19 expenditure minimum;

20 (3) Dispensaries and first aid stations located within
21 business or industrial establishments and maintained
22 solely for the use of employees; provided such



- 1 facilities do not regularly provide inpatient or
2 resident beds for patients or employees on a daily
3 twenty-four-hour basis;
- 4 (4) Dispensaries or infirmaries in correctional or
5 educational facilities;
- 6 (5) Dwelling establishments, such as hotels, motels, and
7 rooming or boarding houses that do not regularly
8 provide health care facilities or health care
9 services;
- 10 (6) Any home or institution conducted only for those who,
11 pursuant to the teachings, faith, or belief of any
12 group, depend for healing upon prayer or other
13 spiritual means;
- 14 (7) Dental clinics;
- 15 (8) Nonpatient areas of care facilities such as parking
16 garages and administrative offices;
- 17 (9) Bed changes that involve ten per cent or ten beds of
18 existing licensed bed types, whichever is less, of a
19 facility's total existing licensed beds within a two-
20 year period;
- 21 (10) Projects that are wholly dedicated to meeting the
22 State's obligations under court orders, including



- 1 consent decrees, that have already determined that
2 need for the projects exists;
- 3 (11) Replacement of existing equipment with its modern-day
4 equivalent;
- 5 (12) Primary care clinics under the expenditure thresholds
6 referenced in section 323D-2;
- 7 (13) Equipment and services related to that equipment [7]
8 that are primarily invented and used for research
9 purposes as opposed to usual and customary diagnostic
10 and therapeutic care;
- 11 (14) Capital expenditures that are required:
- 12 (A) To eliminate or prevent imminent safety hazards
13 as defined by federal, state, or county fire,
14 building, or life safety codes or regulations;
- 15 (B) To comply with state licensure standards;
- 16 (C) To comply with accreditation standards,
17 compliance with which is required to receive
18 reimbursements under Title XVIII of the Social
19 Security Act or payments under a state plan for
20 medical assistance approved under Title XIX of
21 such Act;



- 1 (15) Extended care adult residential care homes and
- 2 assisted living facilities; or
- 3 (16) Other facilities or services that the agency through
- 4 the ~~[statewide council]~~ regional councils chooses to
- 5 exempt, by rules pursuant to section 323D-62."

6 SECTION 17. 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 18. Section 323D-14, Hawaii Revised Statutes, is
 7 repealed.

8 [~~§323D-14 Functions, statewide health coordinating~~
 9 ~~council. The statewide council shall:~~

- 10 ~~(1) Prepare and revise as necessary the state health~~
 11 ~~services and facilities plan;~~
- 12 ~~(2) Advise the state agency on actions under section 323D-~~
 13 ~~12;~~
- 14 ~~(3) Appoint the review panel pursuant to section 323D-42;~~
 15 ~~and~~
- 16 ~~(4) Review and comment upon the following actions by the~~
 17 ~~state agency before such actions are made final:~~
 - 18 ~~(A) The making of findings as to applications for~~
 19 ~~certificate of need; and~~
 - 20 ~~(B) The making of findings as to the appropriateness~~
 21 ~~of those institutional and noninstitutional~~
 22 ~~health services offered in the State."]~~



1 SECTION 19. 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 20. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 21. This Act shall take effect upon its approval.
14

INTRODUCED BY: S.S.T.Z.
A. K. E. G. S. H.

Report Title:

Certificate of Need; Regional Councils

Description:

Makes conforming amendments to the health planning and resources development and health care cost control law, including the certificate of need process, regarding the creation of regional councils. Repeals the review panel, statewide health coordinating council, and subarea councils and replaces them with regional councils.

