

# H.B. NO. 1121

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## 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 in the past has focused on its "gatekeeper"  
5           role by devoting substantial time and resources to adjudications  
6           of requests for a certificate of need. The certificate of need  
7           process (1) acts as an impediment to Hawaii health care  
8           providers who 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, Hawaii  
11          Revised Statutes, to clarify the "development" responsibility of  
12          the state health planning and development agency and to  
13          encourage the state health planning and development agency to  
14          focus greater time and resources on enhancing access to quality  
15          health care within this State.

16          Currently, chapter 323D mandates that health care providers  
17          seek a certificate of need from the state health planning and  
18          development agency if they wish (1) to begin offering most types

1 of health care services; (2) to end rendering most types of  
2 health care services; (3) to provide such health care services  
3 at a different location; or (4) to construct virtually any type  
4 of health care facility.

5 To encourage the development and expansion of the medical  
6 industry and to welcome improvements in medical technology, this  
7 Act broadens the list of facilities and services that are exempt  
8 from the certificate of need requirement under chapter 323D.

9 For those health care providers who remain subject to the  
10 certificate of need requirement, this Act further revises the  
11 certificate of need administrative process in chapter 323D to:  
12 (1) reverse the order in which the statewide health coordinating  
13 council ("statewide council") and the subarea health planning  
14 councils ("county councils") hear a certificate of need  
15 application so that the state health planning and development  
16 agency administrator and the county council are the last to  
17 consider the certificate of need request; (2) require the state  
18 health planning and development agency administrator to give  
19 greater weight to the county council's decision when the state  
20 council's and county council's recommendations conflict; (3)  
21 increase the expenditure minimums for capital expenditures and  
22 for new or replacement medical equipment; and (4) require that a

1 hearing on an applicant's request for reconsideration be held on  
2 the island where the new facility or activity will be based.

3 With these amendments to chapter 323D, the legislature  
4 anticipates that the State's health care services and health care  
5 facilities will be improved for the residents of Hawaii and will  
6 make Hawaii a destination location for patients in the Asia-  
7 Pacific region who are seeking quality health care services.

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

11 **"§323D- State agency review of subarea council and**  
12 **statewide council recommendations for issuance or denial of**  
13 **certificate of need.** In reviewing the recommendations of the  
14 respective subarea council and the statewide council regarding a  
15 certificate of need application, the state agency shall give  
16 greater weight to the recommendation of the respective subarea  
17 council if it conflicts with the recommendation of the statewide  
18 council, unless the state agency finds good cause exists to  
19 reject such recommendation."

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

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

6       The objectives of this health planning and resources  
7 development program are:

- 8       (1) To make broad policy determinations with respect to  
9       development of the health care industry, and to  
10       stimulate through research and demonstration projects  
11       those industrial and economic development efforts that  
12       offer the most immediate promise of expanding the  
13       health care industry, and the types of health care  
14       services available in this State, and of further  
15       diversifying this State's economy;
- 16       (2) To determine through technical and research studies  
17       the profit potential of new or expanded undertakings  
18       in the health care industry and high technology  
19       medical research;
- 20       (3) To disseminate information to assist current health  
21       care providers and high technology medical researchers  
22       in this State; to attract new health care providers

1 and high technology medical researchers to this State;  
2 and to encourage capital investment in existing and  
3 new areas of health care services and high technology  
4 medical research;

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

11 (5) To enter into contracts as may be necessary or  
12 advisable to accomplish the foregoing purpose and  
13 objectives;

14 (6) To work collaboratively with other state departments  
15 and agencies and with other governmental entities  
16 operating both within and outside this State to  
17 accomplish the foregoing purpose and objectives; and

18 (7) To disseminate information developed for or by the  
19 program pertaining to the development of this State's  
20 health care providers and high technology medical  
21 researchers to assist the present health care and  
22 medical research industry in this State; to attract

1           new industry and investment in this State in highly  
2           advanced medical technologies; and to lead this State  
3           into becoming America's vanguard of cutting edge  
4           medical technology, particularly in the Asia-Pacific  
5           region."

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

8           "**§323D-2 Definitions.** [~~As used in this chapter.~~] Whenever  
9 used in this chapter, and unless the context requires otherwise:

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

12           "Assisted living facility" means a combination of housing,  
13 health care services, and personalized support services designed  
14 to respond to individual needs, and to promote choice,  
15 responsibility, independence, privacy, dignity, and  
16 individuality. In this context, "health care services" means the  
17 provision of services in an assisted living facility that  
18 assists the resident in achieving and maintaining the highest  
19 state of positive well-being (i.e., psychological, social,  
20 physical, and spiritual) and functional status. This may  
21 include nursing assessment and monitoring, and the delegation of

1 nursing tasks by registered nurses pursuant to chapter 457, care  
2 management, monitoring, records management, arranging for,  
3 and/or coordinating health and social services.

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

10 (1) Cost of studies, surveys, designs, plans, working  
11 drawings, specifications, and other preliminaries  
12 necessary for construction, expansion, alteration,  
13 conversion, development, initiation, or modification;

14 (2) Fair market values of facilities and equipment  
15 obtained by donation or lease or comparable  
16 arrangements as though the items had been acquired by  
17 purchase; and

18 (3) Fair market values of facilities and equipment  
19 transferred for less than fair market value, if a  
20 transfer of the facilities or equipment at fair market  
21 value would be subject to review under section 323D-  
22 43.

1 "Certificate of need" means an authorization, when required  
2 pursuant to section 323D-43, to construct, expand, alter, or  
3 convert a health care facility or to initiate, expand, develop,  
4 or modify a health care service.

5 "Construct", "expand", "alter", "convert", "develop", "initiate",  
6 or "modify" includes the erection, building, reconstruction,  
7 modernization, improvement, purchase, acquisition, or  
8 establishment of a health care facility or health care service;  
9 the purchase or acquisition of equipment attendant to the  
10 delivery of health care service and the instruction or  
11 supervision therefor; the arrangement or commitment for  
12 financing the offering or development of a health care facility  
13 or health care service; any objection for a capital expenditure  
14 by a health care facility; and studies, surveys, designs, plans,  
15 working drawings, specifications, procedures, and other actions  
16 necessary for any such undertaking, which will:

- 17 (1) Result in a total capital expenditure in excess of the  
18 expenditure minimum,
- 19 (2) Substantially modify, decrease, or increase the scope  
20 or type of health service rendered, or
- 21 (3) Increase, decrease, or change the class of usage of  
22 the bed complement of a health care facility.



1 "Expenditure minimum" means [~~\$4,000,000~~] \$8,000,000 for  
2 capital expenditures [~~, \$1,000,000~~] and \$2,000,000 for new or  
3 replacement medical equipment [~~and \$400,000 for used medical~~  
4 ~~equipment~~].

5 "Extended care adult residential care home" means an adult  
6 residential care home providing twenty-four-hour living  
7 accommodation for a fee, for adults unrelated to the licensee.  
8 The primary caregiver shall be qualified to provide care to  
9 nursing facility level individuals who have been admitted to a  
10 medicaid waiver program, or persons who pay for care from  
11 private funds and have been certified for this type of  
12 facility. There shall be two categories of extended care adult  
13 residential care homes, which shall be licensed in accordance  
14 with rules adopted by the department of health:

- 15 (1) Type I home shall consist of five or less unrelated  
16 persons with no more than two extended care adult  
17 residential care home residents; and
- 18 (2) Type II home shall consist of six or more unrelated  
19 persons and one or more persons may be extended care  
20 adult residential care home residents.

21 "Health" includes physical and mental health.

1 "Health care facility" and "health care service" include any  
2 program, institution, place, building, or agency, or portion  
3 thereof, private or public, other than federal facilities or  
4 services, whether organized for profit or not, used, operated,  
5 or designed to provide medical diagnosis, treatment, nursing,  
6 rehabilitative, or preventive care to any person or persons.

7 ~~[The terms include, but are not limited to, health care~~  
8 ~~facilities and health care services commonly referred to as~~  
9 ~~hospitals, extended care and rehabilitation centers, nursing~~  
10 ~~homes, skilled nursing facilities, intermediate care facilities,~~  
11 ~~hospices for the terminally ill that require licensure or~~  
12 ~~certification by the department of health, kidney disease~~  
13 ~~treatment centers including freestanding hemodialysis units,~~  
14 ~~outpatient clinics, organized ambulatory health care facilities,~~  
15 ~~emergency care facilities and centers, home health agencies,~~  
16 ~~health maintenance organizations, and others providing similarly~~  
17 ~~organized services regardless of nomenclature.]~~

18 "Health care provider" means a health care facility,  
19 physician, dentist licensed under chapter 448, chiropractor  
20 licensed under chapter 442, optometrist licensed under chapter  
21 459, podiatrist licensed under chapter 463E, psychologist  
22 licensed under chapter 465, occupational therapist subject to

1 chapter 457G, and physical therapist licensed under chapter  
2 461J.

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

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

15 "Physician" means a doctor of medicine or osteopathy who is  
16 legally authorized to practice medicine and surgery by the  
17 State.

18 "Primary care clinic" means a clinic for outpatient services  
19 providing all preventive and routine health care services,  
20 management of chronic diseases, consultation with specialists  
21 when necessary, and coordination of care across health care

1 settings or multiple providers or both. Primary care clinic  
2 providers include:

- 3 (1) General or family practice physicians;
- 4 (2) General internal medicine physicians;
- 5 (3) Pediatricians;
- 6 (4) Obstetricians and gynecologists;
- 7 (5) Physician assistants; and
- 8 (6) Advanced practice registered nurses.

9 "Review panel" means the panel established pursuant to  
10 section 323D-42.

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

13 "State health services and facilities plan" means the  
14 comprehensive plan for the economical delivery of health  
15 services in the State prepared by the statewide council.

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

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

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

1 "Substantially modify, decrease, or increase the scope or  
2 type of health service" refers to the establishment of a new  
3 health care facility or health care service or the addition of a  
4 clinically related (i.e., diagnostic, curative, or  
5 rehabilitative) service not previously provided or the  
6 termination of such a service which had previously been  
7 provided."

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

10 **"§323D-12 Health planning and development functions; state**  
11 **agency.** (a) The state agency shall:

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

1 ~~to achieve economies and shall restrict unusual or~~  
2 ~~unusually costly services to individual facilities or~~  
3 ~~providers where appropriate];~~

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

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

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

15 (b) The state agency may:

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

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- 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.

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**

11 **council.** 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;

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~~



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

4           (4) 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 certificate of need 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:~~

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);~~

- 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,  
12   seek 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.

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- 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 council~~].
- 4 (4) Advise the state agency in the administration of the  
5 certificate of need program for their respective  
6 subareas[-], including reviewing comments of the  
7 statewide council and the review panel, and making a  
8 final recommendation to the state agency.
- 9 (5) Advise the state agency on the cost of reimbursable  
10 expenses incurred in the performance of their  
11 functions for inclusion in the state agency budget.
- 12 (6) Advise the state agency in the performance of its  
13 specific functions.
- 14 (7) Perform other such functions as agreed upon by the  
15 state agency and the respective subarea 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-44.5, Hawaii Revised Statutes, is  
20 amended to read as follows:

21 "**§323D-44.5 Administrative review of certain applications**  
22 **for certificate of need.** The state agency shall adopt rules in

1 conformity with chapter 91 providing for administrative review  
2 and decision on certain applications for certificate of need.  
3 Each application reviewed under this section may be subject to a  
4 public information meeting before the state agency makes its  
5 decision. The agency, in the State and in the county affected,  
6 shall give public notice of applications for administrative  
7 review received by the agency. Interested persons may request  
8 in writing a public meeting before the agency renders a decision  
9 on the administrative application. If a request for a public  
10 meeting is received, the administrator will preside over the  
11 meeting. If no request is received by the agency within seven  
12 days of the public notice date, no public meeting need be  
13 scheduled. [~~Applications subject to administrative review and~~  
14 ~~decision under this section shall include but are not limited to~~  
15 ~~applications that are:~~

- 16       ~~(1) Inconsistent with or contrary to the state health~~  
17           ~~services and facilities plan under section 323D-15;~~  
18       ~~(2) Determined not to have a significant impact on the~~  
19           ~~health care system; or~~  
20       ~~(3) Involve capital or annual operating expenses below a~~  
21           ~~significant level.]"~~

1 SECTION 10. Section 323D-44.6, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "[+]§323D-44.6[+] **Review of certain applications for**  
4 **certificate of need; waiver.** The subarea council, the review  
5 panel, and the statewide council may, at their discretion,  
6 choose to waive their respective prerogatives of review of any  
7 certificate of need application."

8 SECTION 11. Section 323D-45, Hawaii Revised Statutes, is  
9 amended to read as follows:

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

1 panel shall consider each application at a public meeting and  
2 shall submit its recommendations with findings to the statewide  
3 council. The [~~statewide~~] subarea council shall consider the  
4 recommendation of the review panel and the statewide council at  
5 a public meeting and shall submit its recommendations to the  
6 state agency within such time as the state agency prescribes.  
7 The statewide council [~~and~~], the review panel, and the subarea  
8 council may join together to hear or consider simultaneously  
9 information related to an application for a certificate of need.

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

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

1           **"§323D-47 Request for reconsideration.** (a) The state  
2 agency may provide by rules adopted in conformity with chapter  
3 91 for a procedure by which any person may, for good cause  
4 shown, request in writing a public hearing before a  
5 reconsideration committee for purposes of reconsideration of the  
6 agency's decision. The reconsideration committee shall consist  
7 of the administrator of the state agency [~~and~~], the chairpersons  
8 of the statewide council[~~7~~] and the review panel, [~~the plan~~  
9 ~~development committee of the statewide council,~~] and the chairs  
10 and vice chairs of the appropriate subarea health planning  
11 council. The administrator shall be the chairperson of the  
12 reconsideration committee. A request for a public hearing shall  
13 be deemed by the reconsideration committee to have shown good  
14 cause, if:

- 15           (1) It presents significant, relevant information not  
16           previously considered by the state agency;
- 17           (2) It demonstrates that there have been significant  
18           changes in factors or circumstances relied upon by the  
19           state agency in reaching its decision;
- 20           (3) It demonstrates that the state agency has materially  
21           failed to follow its adopted procedures in reaching  
22           its decision;

1 (4) It provides such other bases for a public hearing as  
2 the state agency determines constitutes good causes;  
3 or

4 (5) The decision of the administrator differs from the  
5 recommendation of the [~~statewide~~] subarea council.

6 (b) To be effective a request for such a hearing shall be  
7 received within [~~ten working~~] thirty calendar days of the state  
8 agency decision. A decision of the reconsideration committee  
9 following a public hearing under this section shall be  
10 considered a decision of the state agency for purposes of  
11 section 323D-44.

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

15 SECTION 13. Section 323D-49, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 "**§323D-49 Certificates of need; licenses and permits.** (a)

18 [~~No~~] When a certificate of need is required, no permit or  
19 license shall be issued by any county or state officer for the  
20 development, construction, expansion, alteration, conversion,  
21 initiation, or modification of a health care facility or health  
22 care service, other than an existing hospital, or for the



1 operation of a new health care facility or health care service  
2 unless there is submitted in connection with the application for  
3 such permit or license a current certificate of need issued by  
4 the state agency or a statement issued by the state agency that  
5 the health care facility or health care service is not required  
6 to hold a certificate of need under this part.

7 (b) [~~No~~] When a certificate of need is required, no  
8 building permit shall be issued by any county or state officer  
9 for the development, construction, expansion, alteration,  
10 conversion, initiation, or modification of an existing hospital  
11 unless there is submitted in connection with the application for  
12 such building permit a current certificate of need issued by the  
13 state agency or a statement issued by the state agency that the  
14 existing hospital is not required to hold a certificate of need  
15 under this part."

16 SECTION 14. Section 323D-50, Hawaii Revised Statutes, is  
17 amended by amending subsection (b) to read as follows:

18 "(b) Any license to operate a health facility may be  
19 revoked or suspended by the department of health at any time in  
20 a proceeding before the department for any person proceeding  
21 with an action covered under section 323D-43 without a  
22 certificate of need. If any such license is revoked or

1 suspended by the department, the holder of the license shall be  
2 notified in writing by the department of the revocation or  
3 suspension. [~~Any license to operate a health facility that has  
4 been revoked under this section shall not be restored except by  
5 action of the department.~~]"

6 SECTION 15. Section 323D-54, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 **"§323D-54 Exemptions from certificate of need**

9 **requirements.** Nothing in this part or rules with respect to the  
10 requirement for certificates of need applies to:

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

19 (2) Laboratories, as defined in section 321-11(12), except  
20 in any case of purchase or acquisition of equipment  
21 attendant to the delivery of health care service and  
22 the instruction or supervision for any laboratory

- 1           involving a total expenditure in excess of the  
2           expenditure minimum;
- 3           (3)   Dispensaries and first aid stations located within  
4           business or industrial establishments and maintained  
5           solely for the use of employees; provided such  
6           facilities do not regularly provide inpatient or  
7           resident beds for patients or employees on a daily  
8           twenty-four-hour basis;
- 9           (4)   Dispensaries or infirmaries in correctional or  
10          educational facilities;
- 11          (5)   Dwelling establishments, such as hotels, motels, and  
12          rooming or boarding houses that do not regularly  
13          provide health care facilities or health care  
14          services;
- 15          (6)   Any home or institution conducted only for those who,  
16          pursuant to the teachings, faith, or belief of any  
17          group, depend for healing upon prayer or other  
18          spiritual means;
- 19          (7)   Dental clinics;
- 20          (8)   Nonpatient areas of care facilities such as parking  
21          garages and administrative offices;

- 1           (9) Bed changes that involve ten per cent or ten beds of  
2           existing licensed bed types, whichever is less, of a  
3           facility's total existing licensed beds within a two-  
4           year period;
- 5           (10) Projects that are wholly dedicated to meeting  
6           the State's obligations under court orders, including  
7           consent decrees, that have already determined that  
8           need for the projects exists;
- 9           (11) Replacement of existing equipment with its modern-day  
10          equivalent;
- 11          (12) Primary care clinics under the expenditure thresholds  
12          referenced in section 323D-2;
- 13          (13) Equipment and services related to that equipment, that  
14          are primarily invented and used for research purposes  
15          as opposed to usual and customary diagnostic and  
16          therapeutic care;
- 17          (14) Capital expenditures that are required:
- 18                (A) To eliminate or prevent imminent safety hazards  
19                as defined by federal, state, or county fire,  
20                building, or life safety codes or regulations;
- 21                (B) To comply with state licensure standards;

- 1 (C) To comply with accreditation standards,  
2 compliance with which is required to receive  
3 reimbursements under Title XVIII of the Social  
4 Security Act or payments under a state plan for  
5 medical assistance approved under Title XIX of  
6 such Act;
- 7 (15) Extended care adult residential care homes and assisted  
8 living facilities; [~~or~~]
- 9 (16) Acute psychiatric beds and acute or long-term swing  
10 beds as defined in administrative rules;
- 11 (17) Long-term psychiatric beds, long-term tuberculosis  
12 beds, long-term mental retardation beds, long-term  
13 hansen's disease beds, long-term children's orthopedics  
14 beds, long-term rehabilitation beds, skilled nursing  
15 facilities, intermediate care facilities, mental  
16 retardation facilities, special treatment facilities,  
17 and care homes, as defined in administrative rules;
- 18 (18) Outpatient clinics, ultrasound services, clinical  
19 laboratories, pharmacies, social services, home health  
20 agencies, drug rehabilitation centers, alcohol  
21 rehabilitation centers, recompression centers, mental  
22 health centers, family planning clinics, prenatal



**Report Title:**

Health Care; Certificate of Need

**Description:**

Amends the current certificate of need requirement under chapter 323D, Hawaii Revised Statutes, to promote increased access to quality health care.

JUSTIFICATION SHEET

DEPARTMENT: Health

TITLE: A BILL FOR AN ACT RELATING TO ACCESS TO HEALTH CARE.

PURPOSE: To amend chapter 323D, Hawaii Revised Statutes, to emphasize that the primary objective and purpose of the State Health Planning and Development Agency (SHPDA) is to promote access to quality health care by encouraging existing health care providers to expand their businesses and by stimulating prospective 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 to: (1) reverse the order in which 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 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 service is to occur; (3) increase the expenditure minimums for capital expenditures and for new or replacement medical equipment; (4) broaden the list of medical facilities and activities that are exempt from the CON requirement; and (5) delete the redundant rule making provision under the definition of ambulatory health care facility as chapter 323D already provides for rule making.

MEANS: Add a new section to part V of chapter 323D and amend sections 323D-1, 323D-2, 323D-12, 323D-14, 323D-18, 323D-22(a), 323D-44.5,



323D-44.6, 323D-45, 323D-47, 323D-49, 323D-50(b), and 323D-54, Hawaii Revised Statutes.

JUSTIFICATION:

This bill amends chapter 323D, HRS, to emphasize the development responsibility of the SHPDA and to focus more time and resources on increasing 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 (HAR) that were adopted by the 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 facility, 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 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 limit health care costs 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.
- 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, North Dakota, Pennsylvania, Indiana, South Dakota, Texas, Utah, and Wyoming. These repeals of CON statutes have occurred between 1983 and 1999. 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.

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, and giving greater weight to the county council's decision.

Particularly for the neighbor islands, the county council is in the best position to know of the medical needs of the county. 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 conflicts with the State council's recommendation.

The members of a county council, as residents of the county, are more knowledgeable as to the types of medical facilities and medical services that are needed for that county. In addition, 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 a 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 expands the list of services and facilities that are exempt from the CON requirement under chapter 323D, HRS.

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 and more health care providers will be attracted to open businesses in this State.

Impact on the department and other agencies:

By emphasizing the SHPDA's role as a developer of the State's health care capacity, the SHPDA will become more involved in enlarging the health care capacity in this State. Further, the revisions to the CON process will reduce the workload of the 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.

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:

HTH-905.

OTHER AFFECTED

AGENCIES:

None.

EFFECTIVE DATE:

Upon approval.