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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  
5 care facilities will be improved for the residents of Hawaii and  
6 will make Hawaii a destination location for patients in the  
7 Asia-Pacific region who are seeking quality health care  
8 services.

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

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

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



1 "PART I. GENERAL PROVISIONS

2 §323D-1 [~~Purpose-~~] General purpose and objectives. The

3 purpose of this chapter is to establish a health planning and  
4 resources development program to promote accessibility for all  
5 the people of the State to quality health care services at  
6 reasonable cost.

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

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

17 (2) To determine through technical and research studies  
18 the profit potential of new or expanded undertakings  
19 in the health care industry and high technology  
20 medical research;

21 (3) To disseminate information to assist current health  
22 care providers and high technology medical researchers



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

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

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

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

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



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

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

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

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

13           "Assisted living facility" means a combination of housing,  
14 health care services, and personalized support services designed  
15 to respond to individual needs, and to promote choice,  
16 responsibility, independence, privacy, dignity, and  
17 individuality. In this context, "health care services" means  
18 the provision of services in an assisted living facility that  
19 assists the resident in achieving and maintaining the highest  
20 state of positive well-being (i.e., psychological, social,  
21 physical, and spiritual) and functional status. This may  
22 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",  
6 "initiate", or "modify" includes the erection, building,  
7 reconstruction, modernization, improvement, purchase,  
8 acquisition, or establishment of a health care facility or  
9 health care service; the purchase or acquisition of equipment  
10 attendant to the delivery of health care service and the  
11 instruction or supervision therefor; the arrangement or  
12 commitment for financing the offering or development of a health  
13 care facility or health care service; any obligation for a  
14 capital expenditure by a health care facility; and studies,  
15 surveys, designs, plans, working drawings, specifications,  
16 procedures, and other actions necessary for any such  
17 undertaking, which will:

- 18 (1) Result in a total capital expenditure in excess of the  
19 expenditure minimum,
- 20 (2) Substantially modify, decrease, or increase the scope  
21 or type of health service rendered, or





1 (3) Increase, decrease, or change the class of usage of  
2 the bed complement of a health care facility.

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

7 "Extended care adult residential care home" means an adult  
8 residential care home providing twenty-four-hour living  
9 accommodation for a fee, for adults unrelated to the licensee.

10 The primary caregiver shall be qualified to provide care to  
11 nursing facility level individuals who have been admitted to a  
12 medicaid waiver program, or persons who pay for care from  
13 private funds and have been certified for this type of facility.

14 There shall be two categories of extended care adult residential  
15 care homes, which shall be licensed in accordance with rules  
16 adopted by the department of health:

17 (1) Type I home shall consist of five or less unrelated  
18 persons with no more than two extended care adult  
19 residential care home residents; and

20 (2) Type II home shall consist of six or more unrelated  
21 persons and one or more persons may be extended care  
22 adult residential care home residents.

1 "Health" includes physical and mental health.

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

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

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



1 licensed under chapter 465, occupational therapist subject to  
2 chapter 457G, and physical therapist licensed under chapter  
3 461J.

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

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

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

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



1 health care settings or multiple providers or both. Primary  
2 care clinic 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  
19 by 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



- 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~~





1           ~~(B) The making of findings as to the appropriateness~~  
2           ~~of these 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  
6           the state agency and the respective subarea  
7           council and commenting upon the certificate of  
8           need application."

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

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

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

20           ~~(2) Implementation of services under section 323D-54;~~



- 1       ~~(3) Projects that are wholly dedicated to meeting the~~
- 2           ~~State's obligations under court orders, including~~
- 3           ~~consent decrees, under section 323D-54(10);~~
- 4       ~~(4) Replacement of existing equipment with an updated~~
- 5           ~~equivalent under section 323D-54(11);~~
- 6       ~~(5) Primary care clinics under the expenditure thresholds~~
- 7           ~~under section 323D-54(12); and~~
- 8       ~~(6) Equipment and services related to that equipment, that~~
- 9           ~~are primarily intended for research purposes as~~
- 10           ~~opposed to usual and customary diagnostic and~~
- 11           ~~therapeutic care.]"~~

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

14           "**§323D-22 Subarea health planning councils, functions,**  
15 **quorum and number of members necessary to take valid action.**

16       (a) Each subarea health planning council shall review, seek  
17 public input, and make recommendations relating to health  
18 planning for the geographical subarea it serves. In addition,  
19 the subarea health planning councils shall:

- 20           (1) Identify and recommend to the state agency and the
- 21           council the data needs and special concerns of the



- 1            respective subareas with respect to the preparation of  
2            the state plan.
- 3            (2) Provide specific recommendations to the state agency  
4            and the council regarding the highest priorities for  
5            health services and resources development.
- 6            (3) Review the state health services and facilities plan  
7            as it relates to the respective subareas and make  
8            recommendations to the state agency [~~and the council~~].
- 9            (4) Advise the state agency in the administration of the  
10           certificate of need program for their respective  
11           subareas[~~+~~] , including reviewing comments of the  
12           statewide council and the review panel, and making a  
13           final recommendation to the state agency.
- 14           (5) Advise the state agency on the cost of reimbursable  
15           expenses incurred in the performance of their  
16           functions for inclusion in the state agency budget.
- 17           (6) Advise the state agency in the performance of its  
18           specific functions.
- 19           (7) Perform other such functions as agreed upon by the  
20           state agency and the respective subarea councils.



1           (8) Each subarea health planning council shall recommend  
2           for gubernatorial appointment at least one person from  
3           its membership to be on the statewide council.

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

11          SECTION 9. Section 323D-44.5, Hawaii Revised Statutes, is  
12          amended to read as follows:

13          "**§323D-44.5 Administrative review of certain applications**  
14          **for certificate of need.** The state agency shall adopt rules in  
15          conformity with chapter 91 providing for administrative review  
16          and decision on certain applications for certificate of need.  
17          Each application reviewed under this section may be subject to a  
18          public information meeting before the state agency makes its  
19          decision. The agency, in the State and in the county affected,  
20          shall give public notice of applications for administrative  
21          review received by the agency. Interested persons may request  
22          in writing a public meeting before the agency renders a decision



1 on the administrative application. If a request for a public  
2 meeting is received, the administrator will preside over the  
3 meeting. If no request is received by the agency within seven  
4 days of the public notice date, no public meeting need be  
5 scheduled. [~~Applications subject to administrative review and~~  
6 ~~decision under this section shall include but are not limited to~~  
7 ~~applications that are:~~

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

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

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

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



1           "§323D-45   Subarea council, review panel, and statewide  
2   council recommendations for issuance or denial of certificates  
3   of need. (a) Except for an administrative review as provided  
4   in section 323D-44.5, or in an emergency situation or other  
5   unusual circumstances as provided in section 323D-44(c), the  
6   state agency shall refer every application for a certificate of  
7   need to [~~the appropriate subarea council or councils, the review~~  
8   ~~panel, and~~] the statewide council[-], the review panel, and the  
9   appropriate subarea council. The [~~subarea~~] statewide council  
10   and the review panel shall consider all relevant data and  
11   information submitted by the state agency, [~~subarea councils,~~]  
12   other areawide or local bodies, and the applicant, and may  
13   request from them additional data and information. The review  
14   panel shall consider each application at a public meeting and  
15   shall submit its recommendations with findings to the statewide  
16   council. The [~~statewide~~] subarea council shall consider the  
17   recommendation of the review panel and the statewide council at  
18   a public meeting and shall submit its recommendations to the  
19   state agency within such time as the state agency prescribes.  
20   The statewide council [~~and~~], the review panel, and the subarea  
21   council may join together to hear or consider simultaneously  
22   information related to an application for a certificate of need.



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

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

14 "**§323D-47 Request for reconsideration.** (a) The state  
15 agency may provide by rules adopted in conformity with chapter  
16 91 for a procedure by which any person may, for good cause  
17 shown, request in writing a public hearing before a  
18 reconsideration committee for purposes of reconsideration of the  
19 agency's decision. The reconsideration committee shall consist  
20 of the administrator of the state agency [~~and~~], the chairpersons  
21 of the statewide council[~~7~~] and the review panel, [~~the plan~~  
22 ~~development committee of the statewide council~~7] and the chairs



1 and vice chairs of the appropriate subarea health planning  
2 council. The administrator shall be the chairperson of the  
3 reconsideration committee. A request for a public hearing shall  
4 be deemed by the reconsideration committee to have shown good  
5 cause, if:

6 (1) It presents significant, relevant information not  
7 previously considered by the state agency;

8 (2) It demonstrates that there have been significant  
9 changes in factors or circumstances relied upon by the  
10 state agency in reaching its decision;

11 (3) It demonstrates that the state agency has materially  
12 failed to follow its adopted procedures in reaching  
13 its decision;

14 (4) It provides such other bases for a public hearing as  
15 the state agency determines constitutes good causes;  
16 or

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

19 (b) To be effective a request for such a hearing shall be  
20 received within [~~ten working~~] thirty calendar days of the state  
21 agency decision. A decision of the reconsideration committee  
22 following a public hearing under this section shall be





1 considered a decision of the state agency for purposes of  
2 section 323D-44.

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

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

8 **"§323D-49 Certificates of need; licenses and permits. (a)**

9 [~~Ne~~] When a certificate of need is required, no permit or  
10 license shall be issued by any county or state officer for the  
11 development, construction, expansion, alteration, conversion,  
12 initiation, or modification of a health care facility or health  
13 care service, other than an existing hospital, or for the  
14 operation of a new health care facility or health care service  
15 unless there is submitted in connection with the application for  
16 such permit or license a current certificate of need issued by  
17 the state agency or a statement issued by the state agency that  
18 the health care facility or health care service is not required  
19 to hold a certificate of need under this part.

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



1 conversion, initiation, or modification of an existing hospital  
2 unless there is submitted in connection with the application for  
3 such building permit a current certificate of need issued by the  
4 state agency or a statement issued by the state agency that the  
5 existing hospital is not required to hold a certificate of need  
6 under this part."

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

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

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



1           "§323D-54   **Exemptions from certificate of need**

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

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

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

18          (3)   Dispensaries and first aid stations located within  
19                 business or industrial establishments and maintained  
20                 solely for the use of employees; provided such  
21                 facilities do not regularly provide inpatient or

- 1 resident beds for patients or employees on a daily
- 2 twenty-four-hour basis;
- 3 (4) Dispensaries or infirmaries in correctional or
- 4 educational facilities;
- 5 (5) Dwelling establishments, such as hotels, motels, and
- 6 rooming or boarding houses that do not regularly
- 7 provide health care facilities or health care
- 8 services;
- 9 (6) Any home or institution conducted only for those who,
- 10 pursuant to the teachings, faith, or belief of any
- 11 group, depend for healing upon prayer or other
- 12 spiritual means;
- 13 (7) Dental clinics;
- 14 (8) Nonpatient areas of care facilities such as parking
- 15 garages and administrative offices;
- 16 (9) Bed changes that involve ten per cent or ten beds of
- 17 existing licensed bed types, whichever is less, of a
- 18 facility's total existing licensed beds within a two-
- 19 year period;
- 20 (10) Projects that are wholly dedicated to meeting the
- 21 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, that  
8 are primarily invented and used for research purposes  
9 as opposed to usual and customary diagnostic and  
10 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)   Acute psychiatric beds and acute or long-term swing
- 4            beds as defined in administrative rules;
- 5       (17)   Long-term psychiatric beds, long-term tuberculosis
- 6            beds, long-term mental retardation beds, long-term
- 7            hansen's disease beds, long-term children's orthopedic
- 8            beds, long-term rehabilitation beds, skilled nursing
- 9            facilities, intermediate care facilities, mental
- 10           retardation facilities, special treatment facilities,
- 11           and care homes, as defined in administrative rules;
- 12       (18)   Outpatient clinics, ultrasound services, clinical
- 13            laboratories, pharmacies, social services, home health
- 14            agencies, drug rehabilitation centers, alcohol
- 15            rehabilitation centers, recompression centers, mental
- 16            health centers, family planning clinics, prenatal
- 17            clinics, abortion clinics, fixed-wing ambulances,
- 18            helicopter ambulances, comprehensive outpatient
- 19            rehabilitative facilities, chronic renal dialysis
- 20            centers, and hospices, as defined in administrative
- 21            rules; or

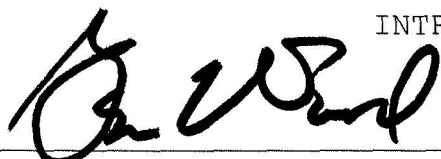
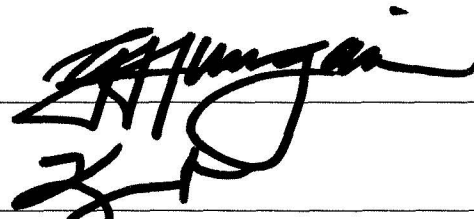
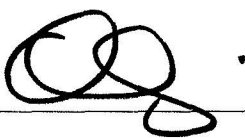
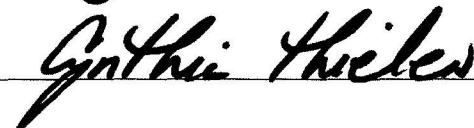

1        [~~16~~] (19) Other facilities or services that the agency  
 2                    through the statewide council chooses to exempt, by  
 3                    rules pursuant to section 323D-62. "

4            SECTION 16. Statutory material to be repealed is bracketed  
 5 and stricken. New statutory material is underscored.

6            SECTION 17. This Act shall take effect upon its approval.

7  
 8

INTRODUCED BY:

JAN 23 2009



**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.

