

JAN 23 2009

A BILL FOR AN ACT

RELATING TO HEALTH.

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

1 SECTION 1. The purpose of this Act is to abolish the
2 law relating to health care cost control by repealing the
3 certificate of need process.

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

6 "**§323D-2 Definitions.** As used in this chapter:

7 ~~["Applicant" means any person who applies for a certificate~~
8 ~~of need under part V.]~~

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



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

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

- 11 (1) Cost of studies, surveys, designs, plans, working
12 drawings, specifications, and other preliminaries
13 necessary for construction, expansion, alteration,
14 conversion, development, initiation, or modification;
- 15 (2) Fair market values of facilities and equipment
16 obtained by donation or lease or comparable
17 arrangements as though the items had been acquired by
18 purchase; and
- 19 (3) Fair market values of facilities and equipment
20 transferred for less than fair market value[, ~~if a~~
21 ~~transfer of the facilities or equipment at fair market~~



1 value would be subject to review under section 323D-
2 43].

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

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

20 (1) Result in a total capital expenditure in excess of the
21 expenditure minimum,



1 (2) Substantially modify, decrease, or increase the scope
2 or type of health service rendered, or

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

5 "Expenditure minimum" means \$4,000,000 for capital
6 expenditures, \$1,000,000 for new or replacement medical
7 equipment and \$400,000 for used medical equipment.

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

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



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

4 "Health" includes physical and mental health.

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



1 "Health care provider" means a health care facility,
2 physician, dentist licensed under chapter 448, chiropractor
3 licensed under chapter 442, optometrist licensed under chapter
4 459, podiatrist licensed under chapter 463E, psychologist
5 licensed under chapter 465, occupational therapist subject to
6 chapter 457G, and physical therapist licensed under chapter
7 461J.

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

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

20 "Physician" means a doctor of medicine or osteopathy who is
21 legally authorized to practice medicine and surgery by the
22 State.



1 "Primary care clinic" means a clinic for outpatient
2 services providing all preventive and routine health care
3 services, management of chronic diseases, consultation with
4 specialists when necessary, and coordination of care across
5 health care settings or multiple providers or both. Primary
6 care clinic providers include:

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

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

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

17 "State health services and facilities plan" means the
18 comprehensive plan for the economical delivery of health
19 services in the State prepared by the statewide council.

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



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

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

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

12 SECTION 3. Section 323D-12, Hawaii Revised Statutes, is
13 amended by amending subsection (a) to read as follows:

14 "(a) The state agency shall:

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



1 ~~under part V shall serve this function.]~~ The state
2 agency shall promote the sharing of facilities or
3 services by health care providers whenever possible to
4 achieve economies [~~and shall restrict unusual or~~
5 ~~unusually costly services to individual facilities or~~
6 ~~providers where appropriate];~~

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

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

16 ~~(4) Administer the state certificate of need program~~
17 ~~pursuant to part V]."~~

18 SECTION 4. Section 323D-13, Hawaii Revised Statutes, is
19 amended by amending subsection (e) to read as follows:

20 "(e) No member of the statewide council shall, in the
21 exercise of any function of the statewide council described in
22 section [~~323D-14(3),~~] 323D-14, vote on any matter before the



1 statewide council respecting any individual or entity with which
2 the member has or, within the twelve months preceding the vote,
3 had any substantial ownership, employment, medical staff,
4 fiduciary, contractual, creditor, or consultative relationship.
5 The statewide council shall require each of its members who has
6 or has had such a relationship with an individual or entity
7 involved in any matter before the statewide council to make a
8 written disclosure of the relationship before any action is
9 taken by the statewide council with respect to the matter in the
10 exercise of any function described in section 323D-14 and to
11 make the relationship public in any meeting in which the action
12 is to be taken."

13 SECTION 5. Section 323D-14, Hawaii Revised Statutes, is
14 amended to read as follows:

15 **"§323D-14 Functions; statewide health coordinating**

16 **council.** The statewide council shall:

17 (1) Prepare and revise as necessary the state health
18 services and facilities plan;

19 (2) Advise the state agency on actions under section 323D-
20 12; and

21 [~~(3) Appoint the review panel pursuant to section 323D-42;~~

22 and



1 ~~(4)]~~ (3) Review and comment upon ~~[the following actions by~~
2 ~~the state agency before such actions are made final:~~
3 ~~(A) The making of findings as to applications for~~
4 ~~certificate of need; and~~
5 ~~(B) The making of findings as to]~~ the appropriateness
6 of those institutional and noninstitutional
7 health services offered in the State."

8 SECTION 6. 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)~~] minimums referenced in
5 section 323D-2; and
- 6 (6) Equipment and services related to that equipment, that
7 are primarily intended for research purposes as
8 opposed to usual and customary diagnostic and
9 therapeutic care."

10 SECTION 7. Section 323D-22, Hawaii Revised Statutes, is
11 amended by amending subsection (a) to read as follows:

12 "(a) Each subarea health planning council shall review,
13 seek public input, and make recommendations relating to health
14 planning for the geographical subarea it serves. In addition,
15 the subarea health planning 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 with respect to the preparation of
19 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 and make
3 recommendations to the state agency and the
4 council[~~-~~];

5 ~~[(4) Advise the state agency in the administration of the~~
6 ~~certificate of need program for their respective~~
7 ~~subareas.~~

8 ~~(5)]~~ (4) Advise the state agency on the cost of
9 reimbursable expenses incurred in the performance of
10 their functions for inclusion in the state agency
11 budget[~~-~~];

12 ~~[(6)]~~ (5) Advise the state agency in the performance of its
13 specific functions[~~-~~];

14 ~~[(7)]~~ (6) Perform other such functions as agreed upon by the
15 state agency and the respective subarea councils[~~-~~];
16 and

17 ~~[(8)]~~ (7) Each subarea health planning council shall
18 recommend for gubernatorial appointment at least one
19 person from its membership to be on the statewide
20 council."

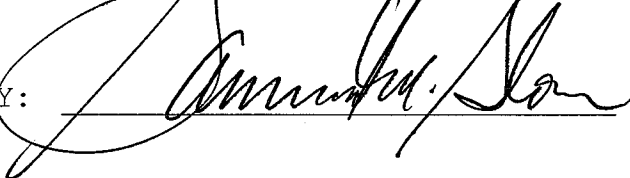
21 SECTION 8. Chapter 323D, Part V, Hawaii Revised Statutes,
22 is repealed.



1 SECTION 9. Chapter 323D, Part VII, Hawaii Revised
2 Statutes, is repealed.

3 SECTION 10. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 11. This Act shall take effect on January 1, 2010.

6
INTRODUCED BY: 



Report Title:

Certificate of Need; Hospital Acquisition; SHPDA

Description:

Repeals the certificate of need process and the law relating to hospital acquisition.

