

**CHAPTER 323D**  
**HEALTH PLANNING AND RESOURCES DEVELOPMENT AND**  
**HEALTH CARE COST CONTROL**

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### **Note**

Chapter reenacted by L 1977, c 178, §2.

Chapter heading amended by L 1984, c 267, §1.

Health care workforce shortage map and database; projections through 2020. L 2007, c 219, §§5, 6.

Interim rules pertaining to health and dental insurance data (effective until June 30, 2017, or rules are adopted pursuant to §323D-18.5(e); reports to 2017-2018 legislature. L 2016, c 139, §§3, 4.

Maui county; expedited reviews for certain certificate of need applications. L 2007, c 219, §3.

### **Cross References**

Conformance with federal law, see §431:2-201.5.

Hawaii health authority, see chapter 322H.

Health maintenance organization act, see chapter 432D.

Hospital sustainability program, see chapter 346G.

Kahuku medical center; designation as a rural hospital, see §346-53.8.

Nursing facility sustainability program, see chapter 346F.

### **"PART I. GENERAL PROVISIONS**

**§323D-1 Purpose.** The purpose of this chapter is to establish a health planning and resources development program to promote accessibility for all the people of the State to quality health care services at reasonable cost. [L 1975, c 159, pt of §2; ree L 1977, c 178, pt of §2; am L 1987, c 270, §3]

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

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

"Assisted living facility" means a combination of housing, health care services, and personalized support services designed to respond to individual needs, and to promote choice, responsibility, independence, privacy, dignity, and individuality. In this context, "health care services" means the provision of services in an assisted living facility that assists the resident in achieving and maintaining the highest state of positive well-being (i.e., psychological, social, physical, and spiritual) and functional status. This may include nursing assessment and monitoring, and the delegation of nursing tasks by registered nurses pursuant to chapter 457, care management, monitoring, records management, arranging for, and/or coordinating health and social services.

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

- (1) Cost of studies, surveys, designs, plans, working drawings, specifications, and other preliminaries necessary for construction, expansion, alteration, conversion, development, initiation, or modification;
- (2) Fair market values of facilities and equipment obtained by donation or lease or comparable arrangements as though the items had been acquired by purchase; and
- (3) Fair market values of facilities and equipment transferred for less than fair market value, if a transfer of the facilities or equipment at fair market value would be subject to review under section 323D-43.

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

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

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

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

"Extended care adult residential care home" means an adult residential care home providing twenty-four-hour living

accommodation for a fee, for adults unrelated to the licensee. The primary caregiver shall be qualified to provide care to nursing facility level individuals who have been admitted to a medicaid waiver program, or persons who pay for care from private funds and have been certified for this type of facility. There shall be two categories of extended care adult residential care homes, which shall be licensed in accordance with rules adopted by the department of health:

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

"Health" includes physical and mental health.

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

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

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

"Person" means an individual or a natural person, a trust or estate, a society, a firm, an assembly, a partnership, a

corporation, a professional corporation, an association, the State, any political subdivision of the State, a county, a state agency or any instrumentality of the State, a county agency or any instrumentality of a county.

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

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

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

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

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

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

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

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

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

"Substantially modify, decrease, or increase the scope or type of health service" refers to the establishment of a new health care facility or health care service or the addition of a clinically related (i.e., diagnostic, curative, or rehabilitative) service not previously provided or the termination of such a service which had previously been provided. [L 1975, c 159, pt of §2; am L 1977, c 178, pt of §2; am L 1980, c 75, §1; am L 1981, c 82, §22; am L 1982, c 245, §5; am L 1984, c 267, §2; am L 1986, c 339, §40; am L 1987, c 270, §4; am L 1997, c 302, §2 and c 336, §§1 to 3]

## **"PART II. STATE HEALTH PLANNING AND DEVELOPMENT PROGRAM**

**§323D-11 State health planning and development agency.**

There is established within the department of health for administrative purposes only, the state health planning and development agency. The state agency shall be headed by an administrator who shall be appointed by the governor subject to section 26-34. The state agency shall administer the state health planning and cost containment activities as required by law. [L 1975, c 159, pt of §2; ree L 1977, c 178, pt of §2; am L 1978, c 129, §2; am L 1980, c 75, §2; am L 1984, c 267, §3]

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

- (1) Have as a principal function the responsibility for promoting accessibility for all the people of the State to quality health care services at reasonable cost. The state agency shall conduct such studies and investigations as may be necessary as to the causes of health care costs including inflation. The state agency may contract for services to implement this paragraph. The certificate of need program mandated under part V shall serve this function. The state agency shall promote the sharing of facilities or services by health care providers whenever possible to achieve economies and shall restrict unusual or unusually costly services to individual facilities or providers where appropriate;
  - (2) Serve as staff to and provide technical assistance and advice to the statewide council and the subarea councils in the preparation, review, and revision of the state health services and facilities plan;
  - (3) Conduct the health planning activities of the State in coordination with the subarea councils, implement the state health services and facilities plan, and determine the statewide health needs of the State after consulting with the statewide council; and
  - (4) Administer the state certificate of need program pursuant to part V.
- (b) The state agency may:
- (1) Prepare such reports and recommendations on Hawaii's health care costs and public or private efforts to reduce or control costs and health care quality as it deems necessary. The report may include, but not be limited to, a review of health insurance plans, the availability of various kinds of health insurance and malpractice insurance to consumers, and strategies for increasing competition in the health insurance field.

- (2) Prepare and revise as necessary the state health services and facilities plan.
- (3) Prepare, review, and revise the annual implementation plan.
- (4) Assist the statewide council in the performance of its functions.
- (5) Determine the need for new health services proposed to be offered within the State.
- (6) Assess existing health care services and facilities to determine whether there are redundant, excessive, or inappropriate services or facilities and make public findings of any that are found to be so. The state agency shall weigh the costs of the health care services or facilities against the benefits the services or facilities provide and there shall be a negative presumption against marginal services.
- (7) Provide technical assistance to persons, public or private, in obtaining and filling out the necessary forms for the development of projects and programs.
- (8) Prepare reports, studies, and recommendations on emerging health issues, such as medical ethics, health care rationing, involuntary care, care for the indigent, and standards for research and development of biotechnology and genetic engineering.
- (9) Conduct such other activities as are necessary to meet the purposes of this chapter. [L 1975, c 159, pt of §2; am L 1976, c 152, §3 and c 219, §3; am L 1977, c 167, §11 and c 178, pt of §2; am L 1980, c 75, §3; am L 1982, c 245, §§1, 5; am L 1984, c 267, §4; am L 1987, c 270, §5; am L 1997, c 336, §4]

" **§323D-12.5 REPEALED.** L 1984, c 267, §15.

" **[§323D-12.6] State health planning and development special fund; created; deposits; expenditures; fees.** (a) There is established within the state treasury, to be administered by the state health planning and development agency, the state health planning and development special fund into which shall be deposited all moneys collected under chapter 323D.

(b) Moneys in the special fund shall be expended by the state health planning and development agency to assist in offsetting program expenses of the agency.

(c) The agency shall adopt rules in accordance with chapter 91 to establish reasonable fees for the purposes of this chapter. [L 1999, c 120, §2]



" **§323D-13 Statewide health coordinating council.** (a) There is established a statewide health coordinating council which shall be advisory to the state agency and the membership of which as appointed by the governor shall not exceed twenty members.

(b) The members of the statewide council shall be appointed by the governor in accordance with section 26-34, provided that a nonvoting, ex officio member who is the representative of the Veterans' Administration shall be designated by the Veterans' Administration. The membership of the statewide council shall be broadly representative of the age, sex, ethnic, income, and other groups that make up the population of the State and shall include representation from the subarea councils, business, labor, and health care providers. A majority but not more than eleven of the members shall be consumers of health care who are not also providers of health care.

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

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

(e) No member of the statewide council shall, in the exercise of any function of the statewide council described in section 323D-14(3), vote on any matter before the statewide council respecting any individual or entity with which the member has or, within the twelve months preceding the vote, had any substantial ownership, employment, medical staff, fiduciary, contractual, creditor, or consultative relationship. The statewide council shall require each of its members who has or has had such a relationship with an individual or entity involved in any matter before the statewide council to make a written disclosure of the relationship before any action is taken by the statewide council with respect to the matter in the exercise of any function described in section 323D-14 and to make the relationship public in any meeting in which the action is to be taken. [L 1975, c 159, pt of §2; am L 1976, c 152, §4; am L 1977, c 178, pt of §2; am L 1978, c 129, §3; am L 1980, c 75, §4; am L 1984, c 267, §5]

**Revision Note**

In subsection (e), section "323D-14(3)" substituted for "323D-14(5)".

" **[§323D-13.5] Disqualification from position or membership.** The chairpersons of the statewide council, the subarea health planning councils and the review panel, shall not be employed by or married to health care providers. [L 1987, c 270, §10; gen ch 1992]

" **§323D-14 Functions; statewide health coordinating council.** The statewide council shall:

- (1) Prepare and revise as necessary the state health services and facilities plan;
- (2) Advise the state agency on actions under section 323D-12;
- (3) Appoint the review panel pursuant to section 323D-42; and
- (4) Review and comment upon the following actions by the state agency before such actions are made final:
  - (A) The making of findings as to applications for certificate of need; and
  - (B) The making of findings as to the appropriateness of those institutional and noninstitutional health services offered in the State. [L 1975, c 159, pt of §2; am L 1977, c 178, pt of §2; am L 1980, c 75, §5; am L 1982, c 245, §5; am L 1984, c 267, §6; am L 1987, c 270, §6; am L 1997, c 336, §5]

" **§323D-15 State health services and facilities plan.** There shall be a state health services and facilities plan which shall address the health care needs of the State, including inpatient care, health care facilities, and special needs. The plan shall depict the most economical and efficient system of care commensurate with adequate quality of care, and shall include standards for utilization of health care facilities and major medical equipment. The plan shall provide for the reduction or elimination of underutilized, redundant, or inappropriate health care facilities and health care services. [L 1975, c 159, pt of §2; am L 1977, c 178, pt of §2; am L 1980, c 75, §6; am L 1982, c 245, §5; am L 1984, c 267, §7]

" **§323D-16 REPEALED.** L 1997, c 336, §14.

" **§323D-17 Public hearings required.** In the preparation of the state health services and facilities plan or amendments to the state health services and facilities plan, the state agency

and the statewide council shall conduct a public hearing on the proposed plan or the amendments and shall comply with the provisions for notice of public hearings in chapters 91 and 92. [L 1975, c 159, pt of §2; ren and am L 1977, c 178, pt of §2; am L 1980, c 75, §7; am L 1982, c 245, §5; am L 1987, c 270, §7]

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

- (1) Information regarding changes in the class of usage of the bed complement of a health care facility under section 323D-54(9);
- (2) Implementation of services under section 323D-54;
- (3) Projects that are wholly dedicated to meeting the State's obligations under court orders, including consent decrees, under section 323D-54(10);
- (4) Replacement of existing equipment with an updated equivalent under section 323D-54(11);
- (5) Primary care clinics under the expenditure thresholds under section 323D-54(12); and
- (6) Equipment and services related to that equipment, that are primarily intended for research purposes as opposed to usual and customary diagnostic and therapeutic care. [L 1977, c 178, pt of §2; am L 1997, c 336, §6]

" **§323D-18.5 Access to health and dental insurance data; mandatory reporting for certain insurers; uses; confidentiality.**

(a) Providers of health insurance doing business in the State and who are not subject to subsection (b) may submit to the state agency or its designee, upon request of the state agency, administrative data that the state agency deems necessary to perform its functions.

(b) Beginning November 1, 2016, providers of health insurance that provide health [benefits] plans funded by the Hawaii employer-union health benefits trust fund, the state medicaid agency, or both, shall provide to the state agency, or its designee, administrative data required by the state agency to determine health benefits costs, including health care services claims and payment data regarding beneficiaries of health benefits plans funded by the Hawaii employer-union health benefits trust fund, the state medicaid agency, or both.

(c) The state agency shall submit data collected pursuant to this section to the college of social sciences, social

sciences research institute, Pacific health informatics and data center at the University of Hawaii for processing, assignment of encrypted identifiers, and any other task deemed necessary by the state agency. After July 1, 2018, the state agency may designate another data center to which to submit the data obtained pursuant to this section; provided that the data center is established under and meets the conflict of interest requirements of 42 United States Code section 300gg-94. The state agency may contract with entities for the analysis of data collected under this section and processed by a data center pursuant to this subsection to benefit medicaid and medicare recipients, public employees, and public sector retirees and for other public purposes.

(d) The state agency shall develop and update an annual plan for the analysis, maintenance, and publication of data collected pursuant to this section. The state agency shall seek approval for the annual plan from the director of health, administrator of the MedQuest division of the department of human services, and the chief information officer of the State.

(e) The state agency shall adopt rules, pursuant to chapter 91, for the schedule and frequency with which providers of health insurance shall provide administrative data to the state agency. Administrative rules shall also include provisions relating to data governance, data submission, use and sharing, information security, privacy protection, reporting, and any other matter necessary for the state agency to perform its functions under this section. In adopting administrative rules, the state agency shall consider the measures necessary to implement data submission requirements by providers of health insurance subject to this section, using methods that are reasonable and cost-effective for data submitters.

(f) The state agency or its designee shall not disclose any individual patient's personal health information in violation of state or federal law.

(g) To minimize any risk of data breaches and re-identification of data, the data and information submitted to the state agency shall include only the minimum protected health information identifiers necessary to link public and private data sources and the geographic and services data to undertake studies.

(h) The state agency or its designee, and any recipient of data collected pursuant to this section, shall maintain the original protected health information identifier in a separate database that is not linked with any other data and shall use a proxy or encrypted record identifier for data analysis.

(i) Under no circumstances shall a person attempt to re-identify subjects of protected health information from the data

submitted to the state agency or its designee. No person may disclose data that contains direct personal identifiers, including but not limited to name, mailing address, e-mail, telephone number, date of birth, or social security number.

(j) The state agency or its designee may acquire federal medicare data sets specific to Hawaii and made available to states. Any public agency that possesses medicare data sets specific to Hawaii shall share the data with the state agency or its designee at no additional cost to the state agency or its designee.

(k) No later than twenty days prior to the convening of each regular session, the state agency shall submit an annual report to the legislature on the submission, maintenance, and use of data submitted to the state agency pursuant to this section.

(1) For the purposes of this section:

"Administrative data" means:

- (1) Statistical and financial reports of information;
- (2) Patient invoices or similar patient encounter data;
- (3) Records of services used for or resulting from administering delivery of health care, pharmacy benefits, or dental care, including records of services provided under health benefits plans as defined in section 87A-1; and
- (4) Any other records as established pursuant to administrative rules adopted pursuant to chapter 91.

"Provider of health insurance" means a group health insurance contract or service agreement that may include medical, hospital, surgical, prescription drug, vision, or dental services, in which a carrier agrees to provide, pay for, arrange for, or reimburse the cost of the services, including third party administrators. [L 1987, c 270, pt of §1; am L 2016, c 139, §2]

#### **Note**

Interim rules pertaining to health and dental insurance data (effective until June 30, 2017, or rules are adopted pursuant to subsection (e)); reports to 2017-2018 legislature. L 2016, c 139, §§3, 4.

" **[§323D-18.6] Confidentiality of information.** The state agency may adopt rules in accordance with chapter 91 to provide that information submitted to the state agency by providers of health care and health care insurance concerning recipients of health care or health care insurance, or both, shall be confidential. [L 1987, c 270, pt of §1]

**"PART III. SUBAREA HEALTH PLANNING COUNCILS**

**§323D-21 Subarea health planning councils, established.**

There are established, subarea health planning councils for geographical areas which shall be designated by the state agency in consultation with the statewide council. Each county shall have at least one subarea health planning council. The subarea health planning councils shall be placed within the state agency for administrative purposes. [L 1977, c 178, pt of §2]

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

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

- (1) Identify and recommend to the state agency and the council the data needs and special concerns of the respective subareas with respect to the preparation of the state plan.
- (2) Provide specific recommendations to the state agency and the council regarding the highest priorities for health services and resources development.
- (3) Review the state health services and facilities plan as it relates to the respective subareas and make recommendations to the state agency and the council.
- (4) Advise the state agency in the administration of the certificate of need program for their respective subareas.
- (5) Advise the state agency on the cost of reimbursable expenses incurred in the performance of their functions for inclusion in the state agency budget.
- (6) Advise the state agency in the performance of its specific functions.
- (7) Perform other such functions as agreed upon by the state agency and the respective subarea councils.
- (8) Each subarea health planning council shall recommend for gubernatorial appointment at least one person from its membership to be on the statewide council.

(b) The number of members necessary to constitute a quorum to do business shall consist of a majority of all the members who have accepted nomination to the council, and have been confirmed and qualified as members of the council. When a quorum is in attendance, the concurrence of a majority of the members in attendance shall make any action of the council valid. [L 1977, c 178, pt of §2; am L 1978, c 129, §4; am L

1980, c 75, §8; am L 1982, c 245, §5; am L 1987, c 270, §8; am L 1997, c 336, §7]

" **§323D-23 [OLD] REPEALED.** L 1977, c 178, §3.

**§323D-23 Subarea health planning councils, composition, appointment.** Members of subarea health planning councils shall be appointed by the governor, subject to section 26-34. Nominations for appointment shall be solicited from health-related and other interested organizations, and agencies, including health planning councils, providers of health care within the appropriate subarea, and other interested persons. The members of the subarea health planning councils shall not be compensated for their services but shall be reimbursed for reasonable expenses necessary to the performance of their function. [L 1977, c 178, pt of §2; am L 1980, c 75, §9; am L 1987, c 270, §9]

#### **Cross References**

Disqualification from position or membership, see §323D-13.5.

" **§§323D-24 to 27 REPEALED.** L 1977, c 178, §3.

#### **"PART IV. STATE MEDICAL FACILITIES--REPEALED**

**§§323D-31 to 33 REPEALED.** L 1980, c 75, §10.

#### **"PART V. CERTIFICATE OF NEED**

#### **Note**

Part redesignated by L 1976, c 152, §2.

**§323D-41 REPEALED.** L 1984, c 267, §16.

" **§323D-42 Review panel.** There is established a review panel for the purposes of reviewing applications for certificates of need. The review panel shall be appointed by the statewide council. The review panel shall include at least one member from each county and a majority of the members shall be consumers. Membership on the statewide council shall not preclude membership on the review panel established in this section. [L 1975, c 159, pt of §2; am L 1977, c 178, pt of §2]

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

- (1) Construct, expand, alter, convert, develop, initiate, or modify a health care facility or health care services in the State that requires a total capital expenditure in excess of the expenditure minimum; or
- (2) Substantially modify or increase the scope or type of health service rendered; or
- (3) Increase, decrease, or change the class of usage of the bed complement of a health care facility, or relocate beds from one physical facility or site to another,

unless a certificate of need therefor has first been issued by the state agency.

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

- (1) There is a public need for the facility or the service; and
- (2) The cost of the facility or service will not be unreasonable in the light of the benefits it will provide and its impact on health care costs.

(c) The state agency may adopt criteria for certificate of need review which are consistent with this section. Such criteria may include but are not limited to need, cost, quality, accessibility, availability, and acceptability.

Each decision of the state agency to issue a certificate of need shall, except in an emergency situation that poses a threat to public health, be consistent with the state health services and facilities plan in effect under section 323D-15. Each certificate of need issued shall be valid for a period of one year from the date of issuance unless the period is extended for good cause by the state agency and expenditures for the project shall not exceed the maximum amount of the expenditures approved in the certificate of need. [L 1975, c 159, pt of §2; am L 1977, c 178, pt of §2; am L 1980, c 75, §12; am L 1982, c 245, §5; am L 1984, c 267, §9; am L 1987, c 270, §11; am L 1997, c 336, §8]

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

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

The state agency shall not accept an application for review until the application is complete and includes all necessary



information required by the state agency. The state agency shall determine if the application is complete within thirty days of receipt of the application. If the state agency determines that the application is incomplete, the state agency shall inform the applicant of the additional information that is required to complete the application. When the state agency determines that the application is complete, the period for agency review described in subsection (b) shall begin, and the state agency shall transmit the completed application to the appropriate subarea councils, the review panel, the statewide council, appropriate individuals, and appropriate public agencies. The state agency may require the applicant to provide copies of the application to the state agency, the appropriate subarea councils, the review panel, the statewide council, appropriate individuals, and appropriate public agencies. If, during the period for agency review, the state agency requires the applicant to submit information respecting the subject of the review, the period for agency review shall, at the request of the applicant, be extended fifteen days.

(b) The state agency shall issue a decision on the application within ninety days after the beginning of the period for agency review, unless the state agency within the ninety days notifies the applicant in writing that the period for agency review has been extended by the state agency sixty days beyond the ninety days. The decision shall be subject to post-decision review procedures which the state agency may provide for by rules adopted in conformity with chapter 91.

(c) The state agency may adopt rules in conformity with chapter 91 for the issuance of certificates of need for those applications for which the procedures in section 323D-45 would be infeasible because of an emergency situation or other unusual circumstances.

(d) Notwithstanding anything to the contrary in subsections (a) and (b), the state agency may adopt rules in conformity with chapter 91 providing that all completed applications pertaining to similar types of services, facilities, or equipment affecting the same health service area shall be considered in relation to each other but no less often than twice a year. [L 1975, c 159, pt of §2; am L 1977, c 178, pt of §2; am L 1980, c 75, §13; am L 1982, c 245, §4; am L 1984, c 267, §10; am L 1997, c 336, §9]

" **§323D-44.5 Administrative review of certain applications for certificate of need.** The state agency shall adopt rules in conformity with chapter 91 providing for administrative review and decision on certain applications for certificate of need. Each application reviewed under this section may be subject to a

public information meeting before the state agency makes its decision. The agency, in the State and in the county affected, shall give public notice of applications for administrative review received by the agency. Interested persons may request in writing a public meeting before the agency renders a decision on the administrative application. If a request for a public meeting is received, the administrator will preside over the meeting. If no request is received by the agency within seven days of the public notice date, no public meeting need be scheduled. Applications subject to administrative review and decision under this section shall include but are not limited to applications that are:

- (1) Inconsistent with or contrary to the state health services and facilities plan under section 323D-15;
- (2) Determined not to have a significant impact on the health care system; or
- (3) Involve capital or annual operating expenses below a significant level. [L 1987, c 270, pt of §2; am L 1989, c 254, §2; am L 1997, c 336, §10; am L 1998, c 2, §86]

" **[§323D-44.6] Review of certain applications for certificate of need; waiver.** The subarea council, the review panel, and the statewide council may, at their discretion, choose to waive their respective prerogatives of review of any certificate of need application. [L 1987, c 270, pt of §2]

" **[§323D-44.7] Monitoring of approved certificates of need.** The state agency may monitor implementation of approved certificates of need granted by the agency. [L 1987, c 270, pt of §2]

" **§323D-45 Subarea council, review panel, and statewide council recommendations for issuance or denial of certificates of need.** (a) Except for an administrative review as provided in section 323D-44.5, or in an emergency situation or other unusual circumstances as provided in section 323D-44(c), the state agency shall refer every application for a certificate of need to the appropriate subarea council or councils, the review panel, and the statewide council. The subarea council and the review panel shall consider all relevant data and information submitted by the state agency, subarea councils, other areawide or local bodies, and the applicant, and may request from them additional data and information. The review panel shall consider each application at a public meeting and shall submit its recommendations with findings to the statewide council. The statewide council shall consider the recommendation of the

review panel at a public meeting and shall submit its recommendations to the state agency within such time as the state agency prescribes. The statewide council and the review panel may join together to hear or consider simultaneously information related to an application for a certificate of need.

(b) At a public meeting in which a subarea council or the review panel considers an application for a certificate of need, any person shall have the right to be represented by counsel and to present oral or written arguments and evidence relevant to the application; any person directly affected by the application may conduct reasonable questioning of persons who make factual allegations relevant to the application; any staff member of the state agency may conduct reasonable questioning of persons who make factual allegations relevant to the application; and a record of the meeting shall be kept. [L 1975, c 159, pt of §2; am L 1977, c 178, pt of §2; am L 1980, c 75, §14; am L 1984, c 267, §11; am L 1987, c 270, §12]

" **§323D-45.1 Ex parte contacts prohibited.** (a) There shall be no ex parte contacts:

- (1) In the case of an application for a certificate of need, between the applicant for the certificate of need, any person acting on behalf of the applicant, any person in favor of the application or any person opposed to the issuance of a certificate of need and any person in the state agency who exercises any responsibility respecting the application, after the commencement of the state agency's review of the application and before the state agency makes a decision on the application, on any matter related to or arising out of the application for a certificate of need;
- (2) In the case of a proposed withdrawal of a certificate of need, between the holder of the certificate of need, any person acting on behalf of the holder, any person opposed to the withdrawal or any person in favor of the withdrawal and any person in the state agency who exercises any responsibility respecting withdrawal of the certificate of need, after the commencement of state agency proceedings on the proposed withdrawal and before the state agency makes a decision on the proposed withdrawal, on any matter related to or arising out of the proposed withdrawal of the certificate of need; and
- (3) In the case of an application for an exemption from obtaining a certificate of need, between the applicant for an exemption, any person acting on behalf of the

applicant, any person in favor of the application or any person opposed to the application and any person in the state agency who exercises any responsibility respecting the application, after the commencement of the state agency's review of the application and before the state agency makes a decision on the application, on any matter related to or arising out of the application for an exemption from obtaining a certificate of need.

(b) The prohibition against ex parte contacts shall not apply to any written communication or a copy thereof which is promptly filed as a public record with the state agency. [L 1980, c 75, §15]

" **§323D-45.2 REPEALED.** L 1987, c 270, §15.

" **§323D-45.3 Approval of applications required to meet safety, licensure, or accreditation standards.** (a)

Notwithstanding section 323D-43, the state agency shall approve an application for a certificate of need for a capital expenditure which is required:

- (1) To eliminate or prevent imminent safety hazards as defined by federal, state, or county fire, building, or life safety codes or regulations, or
- (2) To comply with state licensure standards,
- (3) To comply with accreditation standards, compliance with which is required to receive reimbursements under Title XVIII of the Social Security Act or payments under a state plan for medical assistance approved under Title XIX of such Act,

unless the state agency finds that the facility or service with respect to which the capital expenditure is proposed to be made is not needed or that the obligation of the capital expenditure is not consistent with the state health services and facilities plan in effect under section 323D-15.

(b) An application for a certificate of need approved by the state agency under this section shall be approved only to the extent that the capital expenditure is required to eliminate or prevent the hazards described in paragraph (1) or to comply with the standards described in paragraph (2) or (3). [L 1980, c 75, §17; am L 1982, c 245, §5; am L 1984, c 267, §13]

" **§323D-46 Conditional certification.** The state agency shall provide by rules adopted in conformity with chapter 91 for the conditional certification of those proposals which, by modification of specific items of the proposal, would successfully meet the criteria for approval. The state agency

shall establish a time period not to exceed one hundred fifty days from the date of the conditional certification within which the applicant shall certify to the state agency that the required modifications have been made. The state agency shall require a statement from the applicant certifying that the required modifications have been made before a certificate of need is issued. The state agency shall deny any application in which the required modifications have not been made within the time period established by the state agency. [L 1977, c 178, pt of §2; am L 1980, c 75, §18]

" **§323D-46.1 REPEALED.** L 1984, c 267, §17.

" **§323D-46.2 Withdrawal of a certificate of need.** (a) After the issuance of a certificate of need, the state agency shall periodically review the progress of the project. The state agency may withdraw the certificate of need, if the state agency determines on the basis of the review that:

- (1) The holder of the certificate of need is not meeting the timetable specified in the approved application for the certificate of need and is not making a good faith effort to meet it; or
- (2) The project being implemented differs substantially from that which was approved by the state agency.

(b) The state agency may withdraw at any time a certificate of need or an exemption from obtaining a certificate of need, if the state agency determines that the applicant procured the certificate of need or the exemption by fraud, misrepresentation, or corruption, or that the applicant submitted or caused to be submitted to the state agency false statements or information in connection with the application for the certificate of need or the exemption.

(c) The state agency shall adopt rules in conformity with chapter 91 for the withdrawal of certificates of need. [L 1980, c 75, §20]

" **§323D-47 Request for reconsideration.** The state agency may provide by rules adopted in conformity with chapter 91 for a procedure by which any person may, for good cause shown, request in writing a public hearing before a reconsideration committee for purposes of reconsideration of the agency's decision. The reconsideration committee shall consist of the administrator of the state agency and the chairpersons of the statewide council, the review panel, the plan development committee of the statewide council, and the appropriate subarea health planning council. The administrator shall be the chairperson of the reconsideration committee. A request for a public hearing shall

be deemed by the reconsideration committee to have shown good cause, if:

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

To be effective a request for such a hearing shall be received within ten working days of the state agency decision. A decision of the reconsideration committee following a public hearing under this section shall be considered a decision of the state agency for purposes of section 323D-44. [L 1977, c 178, pt of §2; am L 1987, c 270, §13; am L 1997, c 336, §11]

#### **Case Notes**

State health planning and development agency administrator was not disqualified from participating in the reconsideration of respondent's certificate of need pursuant to §11-1-25(a)(4), Hawaii administrative rules (HAR), which prohibits a hearings officer from hearing or deciding a contested case in which the hearings officer substantially participated in making the decision or action contested, given that in crafting this section, the legislature clearly intended that the administrator participate in both the initial decision on a certificate of need, and in any reconsideration of that decision. Further, because §11-1-25(a)(4), HAR, conflicts with that intent, it would be invalid if applied in the circumstances of this case, and thus was inapplicable. 130 H. 95, 306 P.3d 140 (2013).

" **§323D-48 Judicial review of state agency decisions.** (a) If an application for a certificate of need or for an exemption from obtaining a certificate of need is denied, the state agency shall give notice to the applicant in writing stating the grounds for the denial. Any person adversely affected by a final decision of the state agency with respect to a certificate of need or an application for an exemption may appeal in the manner provided in chapter 91 to the circuit court of the circuit in which the person resides or in the circuit in which

the health care facility or health care service is or was planned to be located.

(b) Any person adversely affected by a final decision of the state agency with respect to the withdrawal of a certificate of need may appeal in the manner provided in chapter 91 to the circuit court of the circuit in which the person resides or in the circuit in which the health care facility or health care service is or was planned to be located. [L 1975, c 159, pt of §2; ren L 1977, c 178, pt of §2; am L 1980, c 75, §21]

" **§323D-49 Certificates of need; licenses and permits.** (a) No permit or license shall be issued by any county or state officer for the development, construction, expansion, alteration, conversion, initiation, or modification of a health care facility or health care service, other than an existing hospital, or for the operation of a new health care facility or health care service unless there is submitted in connection with the application for such permit or license a current certificate of need issued by the state agency or a statement issued by the state agency that the health care facility or health care service is not required to hold a certificate of need under this part.

(b) No building permit shall be issued by any county or state officer for the development, construction, expansion, alteration, conversion, initiation, or modification of an existing hospital unless there is submitted in connection with the application for such building permit a current certificate of need issued by the state agency or a statement issued by the state agency that the existing hospital is not required to hold a certificate of need under this part. [L 1975, c 159, pt of §2; ren and am L 1977, c 178, pt of §2; am L 2004, c 33, §1]

" **§323D-50 Certificates of need, penalties.** (a) Any person who violates any provision of this part, or rules thereunder, with respect to the requirement for certificate of need shall be guilty of a misdemeanor for each seven-day period or fraction thereof that the violation continues. Each subsequent seven-day period shall constitute a separate offense.

(b) Any license to operate a health facility may be revoked or suspended by the department of health at any time in a proceeding before the department for any person proceeding with an action covered under section 323D-43 without a certificate of need. If any such license is revoked or suspended by the department, the holder of the license shall be notified in writing by the department of the revocation or suspension. Any license to operate a health facility that has

been revoked under this section shall not be restored except by action of the department.

(c) Any person who violates any provision of this chapter or rules adopted under this chapter, with respect to the agency's requests for reporting, may be subject to an administrative penalty not to exceed \$2,000 for each seven-day period or fraction thereof that the violation continues. The administrator of the state agency may impose the administrative penalty specified in this section by order; provided that no penalty shall be assessed unless the person charged shall have been given notice and an opportunity for a hearing pursuant to chapter 91. The administrative penalty contained in the notice of finding of violation shall become a final order unless, within twenty days of receipt of the notice, the person charged makes a written request for a hearing. For any judicial proceeding to recover the administrative penalty imposed, the administrator need only show that notice was given, a hearing was held or the time granted for requesting a hearing has expired without such a request, the administrative penalty was imposed, and that the penalty remains unpaid. [L 1975, c 159, pt of §2; ren and am L 1977, c 178, pt of §2; am L 1997, c 336, §12]

" **§323D-51 Injunctive relief.** The state agency may, in the name of the people of the State through the attorney general of the State, apply for an injunction in any court of competent jurisdiction to enjoin any person who is not the holder of a certificate of need and who is not exempted from obtaining a certificate of need; and, upon the filing of a verified petition in the court, the court or any judge thereof, if satisfied by affidavit or otherwise, that the person is or has been proceeding with an action covered under section 323D-43 without a certificate of need, may issue a temporary injunction, without notice or bond, enjoining the defendant from further action. A copy of the verified complaint shall be served upon the defendant and the proceedings shall thereafter be conducted as in other civil cases. If it is established that the defendant has been or is proceeding with an action covered under section 323D-43 without a certificate of need, the court or any judge thereof may enter a decree enjoining the defendant from further action. In case of violation of any injunction issued under this section, the court may summarily try and punish the offender for contempt of court. The injunction proceeding shall be in addition to, and not in lieu of, all penalties and other remedies provided in this chapter. [L 1977, c 178, pt of §2; am L 1980, c 75, §22]



" **§323D-52 Letters of intent.** Persons proposing construction projects shall submit to the state agency letters of intent in such detail as may be necessary to inform the agency of the scope and nature of the projects at the earliest possible opportunity in the course of planning of such construction projects. [L 1977, c 178, pt of §2]

" **§323D-53 Periodic reports from health facilities.** Any health facility or business subject to regulation under this part shall, at the request of the state agency, supply such information to the state agency as is necessary to carry out the purposes of this chapter, including but not limited to:

- (1) Periodic reports from holders of certificates of need respecting the development of the proposals for which certificates have been issued,
- (2) Master plans, feasibility studies, and other long-range plans and studies,
- (3) Financial information, and
- (4) Utilization information. [L 1977, c 178, pt of §2]

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

- (1) Offices of physicians, dentists, or other practitioners of the healing arts in private practice as distinguished from organized ambulatory health care facilities, except in any case of purchase or acquisition of equipment attendant to the delivery of health care service and the instruction or supervision for any private office or clinic involving a total expenditure in excess of the expenditure minimum;
- (2) Laboratories, as defined in section 321-11(12), except in any case of purchase or acquisition of equipment attendant to the delivery of health care service and the instruction or supervision for any laboratory involving a total expenditure in excess of the expenditure minimum;
- (3) Dispensaries and first aid stations located within business or industrial establishments and maintained solely for the use of employees; provided such facilities do not regularly provide inpatient or resident beds for patients or employees on a daily twenty-four-hour basis;
- (4) Dispensaries or infirmaries in correctional or educational facilities;
- (5) Dwelling establishments, such as hotels, motels, and rooming or boarding houses that do not regularly

- provide health care facilities or health care services;
- (6) Any home or institution conducted only for those who, pursuant to the teachings, faith, or belief of any group, depend for healing upon prayer or other spiritual means;
  - (7) Dental clinics;
  - (8) Nonpatient areas of care facilities such as parking garages and administrative offices;
  - (9) Bed changes that involve ten per cent or ten beds of existing licensed bed types, whichever is less, of a facility's total existing licensed beds within a two-year period;
  - (10) Projects that are wholly dedicated to meeting the State's obligations under court orders, including consent decrees, that have already determined that need for the projects exists;
  - (11) Replacement of existing equipment with its modern-day equivalent;
  - (12) Primary care clinics under the expenditure thresholds referenced in section 323D-2;
  - (13) Equipment and services related to that equipment, that are primarily invented and used for research purposes as opposed to usual and customary diagnostic and therapeutic care;
  - (14) Capital expenditures that are required:
    - (A) To eliminate or prevent imminent safety hazards as defined by federal, state, or county fire, building, or life safety codes or regulations;
    - (B) To comply with state licensure standards;
    - (C) To comply with accreditation standards, compliance with which is required to receive reimbursements under Title XVIII of the Social Security Act or payments under a state plan for medical assistance approved under Title XIX of such Act;
  - (15) Extended care adult residential care homes and assisted living facilities; or
  - (16) Other facilities or services that the agency through the statewide council chooses to exempt, by rules pursuant to section 323D-62. [L 1975, c 159, pt of §2; ren and am L 1977, c 178, pt of §2; am L 1979, c 150, §1; am L 1980, c 75, §23; am L 1987, c 270, §14; am L 1997, c 302, §3 and c 336, §13]

**Revision Note**

Paragraphs (15) and (16) redesignated pursuant to §23G-15(1).

" **§323D-55 REPEALED.** L 1987, c 270, §16.

## "PART VI. GENERAL ADMINISTRATION

### Note

Part redesignated by L 1976, c 152, §2.

**§323D-61 Personnel.** The administrator of the state agency shall hire necessary personnel under chapter 76 to carry out the purposes of this chapter. [L 1975, c 159, pt of §2; ree L 1977, c 178, pt of §2; am L 2000, c 253, §150]

" **§323D-62 Rules.** The state agency and the statewide health coordinating council may adopt necessary rules for the purposes of this chapter in accordance with chapter 91. [L 1975, c 159, pt of §2; am L 1977, c 178, pt of §2; am L 1980, c 75, §25]

## "[PART VII.] HOSPITAL ACQUISITION

**§323D-71 Definitions.** For the purpose of this part, unless the context requires otherwise:

"Acquisition" means any acquisition by a person or persons of an ownership or controlling interest in a hospital, whether by purchase, merger, lease, gift, or otherwise, that results in a change of ownership or control of twenty per cent or greater or which results in the acquiring person or persons holding a fifty per cent or greater interest in the ownership or control of that hospital.

"Agency" means the state health planning and development agency.

"Hospital" means an institution with an organized medical staff, regulated under section 321-11(10) which admits patients for inpatient care, diagnosis, observation, and treatment, but does not include a public health facility under chapter 323F.

"Person" has the meaning found in section 323D-2. [L 1998, c 257, pt of §1; am L 2001, c 69, §1]

" **§323D-72 Acquisition of hospital.** (a) No person shall engage in the acquisition of a hospital without first:

- (1) Applying for and receiving the approval of the agency; and
- (2) Notifying the attorney general and, if applicable, receiving approval from the attorney general pursuant to this part.

(b) Any person not required to obtain the approval of the agency under this part shall give the attorney general at least ninety days prior notice of an impending acquisition, during which time the attorney general may take any necessary and appropriate action consistent with general duties of oversight with regard to the conduct of charities, if applicable. The notice shall briefly describe the impending acquisition, including any change in ownership of tangible or intangible assets.

(c) The application shall be submitted to the agency and the attorney general on forms provided by the agency and shall include:

- (1) The name of the seller, the name of the purchaser, and the names of other parties to an acquisition;
- (2) The terms of the proposed agreement;
- (3) The sale price;
- (4) A copy of the acquisition agreement;
- (5) A financial and economic analysis and report from an independent expert or consultant of the effect of the acquisition under the criteria set forth in section 323D-76; and
- (6) All other related documents.

A copy of the application and copies of all additional related materials shall be submitted to the agency and to the attorney general at the same time. The applications and all related documents shall be considered government records. [L 1998, c 257, pt of §1; am L 2001, c 69, §2]

" **[§323D-73] Notice; procedures.** (a) Within five working days after receipt of a complete application under section 323D-72, the agency shall give public notice of the application in the affected county or counties where the hospital is located and shall notify by first-class mail any person who has requested notice of the filing of such applications. The public notice shall state that a completed application has been received, state the names of the parties to the agreement, describe the contents of the application, and state the date by which a person may submit written comments about the application to the agency.

(b) Within ninety days after receiving a complete application, the agency shall review the application in accordance with the standards set forth in this part and approve or disapprove the acquisition.

Within twenty days after receiving a complete application, the attorney general shall determine whether a review of the application in accordance with section 323D-76 is appropriate and notify the applicant if a review is warranted. If the

attorney general determines that a review is unnecessary or not appropriate, then none of the other provisions of this part applicable to review by the attorney general shall apply.

(c) For acquisitions which require approval from the agency under this part and a certificate of need, the applicant shall submit a single application for both purposes and the application shall be reviewed under a single unified review process by the agency. Following the single unified review process, the agency shall simultaneously issue its decision regarding the certificate of need and its decision for purposes of the sale of a hospital under this part. [L 1998, c 257, pt of §1]

" **[§323D-74] Hearings.** (a) The agency, after consultation with the attorney general, shall, if appropriate, hold a public hearing during the course of review, which hearing may be held jointly with the certificate of need review panel or the statewide health coordinating council, and in which any person may file written comments and exhibits or appear and make a statement. The agency or the attorney general may subpoena additional information or witnesses, require and administer oaths, require sworn statements, take depositions, and use related discovery procedures for purposes of the hearing and at any time prior to making a decision on the application.

(b) The hearing shall be held no later than sixty days after receipt of a complete application. The hearing shall be held upon ten working days notice, not including days the application is deemed to be incomplete. [L 1998, c 257, pt of §1]

" **[§323D-75] Review; decision; rules.** (a) The attorney general shall conduct its review of the application in accordance with the standards enumerated in section 323D-76. Within ninety days after receipt of an application, the attorney general shall review and approve or disapprove the acquisition.

(b) If the attorney general does not act within ninety days after receipt of an application, the application shall be deemed approved. If the attorney general approves or disapproves the acquisition, the applicant, or any person who has submitted comments and has a legal interest in the hospital being acquired or in another hospital that has contracted with the acquired hospital for the provision of essential health services, may bring an action for declaratory judgment for a determination that the acquisition is or is not in the public interest under the criteria set forth in section 323D-76.

(c) The agency shall review the completed application in accordance with the standards enumerated in section 323D-77.

Within ninety days after receipt of a completed application, the agency shall:

- (1) Approve the acquisition, with or without any specific modifications; or
- (2) Disapprove the acquisition.

The agency shall not make its decision subject to any condition not directly related to criteria enumerated in section 323D-77, and any condition or modification shall bear a direct and rational relationship to the application under review.

(d) Any affected person may appeal a final decision by the agency to the reconsideration committee created under section 323D-47 under procedures substantially similar to those for appeals of health care certificate of need decisions. The reconsideration committee shall have the same powers and duties with respect to appeals under this part as exist for appeals to the reconsideration committee regarding issuance of certificates of need. The findings, conclusions, and decisions of the reconsideration committee shall constitute the determination of the agency. The agency, the applicant, or any affected person who has intervened in the matter before the reconsideration committee may seek judicial review of any agency determination.

(e) If both the agency and the attorney general review the application, it shall not be granted unless it is approved by both. [L 1998, c 257, pt of §1]

**" §323D-76 Acquisition in the public interest; decision of attorney general.** If the attorney general determines that a review of the application is appropriate, the attorney general shall approve the application unless the attorney general finds that the acquisition is not in the public interest. An acquisition of a private nonprofit hospital is not in the public interest unless appropriate steps have been taken to safeguard the value of charitable assets and ensure that any proceeds of the transaction are used for appropriate charitable health care purposes as provided in paragraph (8). In determining whether the acquisition meets such criteria, the attorney general shall consider, as applicable:

- (1) Whether the acquisition is permitted under chapter 414D governing nonprofit entities, trusts, or charities;
- (2) Whether the hospital acted in a duly diligent manner in deciding to sell, selecting the purchaser, and negotiating the terms and conditions of the sale;
- (3) The procedures used by the seller in making its decision, including whether appropriate expert assistance was used;

- (4) Whether all conflicts of interest were disclosed, including, but not limited to, conflicts of interest related to board members of, executives of, and experts retained by the seller, purchaser, or parties to the acquisition;
- (5) Whether the seller will receive reasonably fair value for its assets. The attorney general may employ, at the seller's expense, reasonably necessary expert assistance in making this determination;
- (6) Whether charitable funds are placed at unreasonable risk, if the acquisition is financed in part by the seller;
- (7) Whether any management contract under the acquisition is for reasonably fair value;
- (8) Whether the sale proceeds will be used for appropriate charitable health care purposes consistent with the seller's original purpose or for the support and promotion of health care in the affected community, and will be controlled as charitable funds independent of the purchaser or parties to the acquisition; and
- (9) Whether a right of first refusal to repurchase the assets by a successor nonprofit corporation or foundation has been retained, if the hospital is subsequently sold to, acquired by, or merged with another entity. [L 1998, c 257, pt of §1; am L 2002, c 40, §10]

" **[§323D-77] Acquisition; decision by agency.** In making a decision whether to approve or disapprove an application, the agency shall consider:

- (1) Whether sufficient safeguards are included to ensure that the affected community has continued access to affordable care;
- (2) Whether the purchaser and parties to the acquisition have made a commitment to provide health care to the disadvantaged, uninsured, and underinsured, and to provide benefits to the affected community to promote improved health care. Current and prior health care activities and funding for those activities by the seller or its successor nonprofit corporation or foundation may be considered in evaluating compliance with this commitment;
- (3) If health care providers will be offered the opportunity to invest or own an interest in the purchaser or a related entity to the purchaser; and

- (4) Whether procedures or safeguards are in place to avoid conflict of interest in patient referral and the nature of those procedures or safeguards.

This section does not apply higher standards to hospitals covered by this part than those applicable to hospitals not covered by this part. [L 1998, c 257, pt of §1]

" **[\$323D-78] Revocation; hearing.** If the agency receives information indicating that the acquiring person is not fulfilling the commitment to the affected community under section 323D-77, the agency shall hold a hearing upon ten days notice to the affected parties. If after the hearing the agency determines that the information is true, the department may institute proceedings to revoke the license issued to the purchaser. [L 1998, c 257, pt of §1]

" **[\$323D-79] Public interest.** The attorney general shall have the authority to ensure compliance with commitments made pursuant to section 323D-77. [L 1998, c 257, pt of §1]

" **[\$323D-80] License renewal.** No license to operate a hospital may be issued or renewed by the department of health pursuant to this chapter, and a license which has been issued shall be subject to revocation or suspension, if:

- (1) There is an acquisition of a hospital without first having received the approval of the agency under this part;
- (2) There is an acquisition of a hospital without the approval of the attorney general, if the attorney general determines that a review of the application is appropriate under this part;
- (3) There is an acquisition of a hospital and the attorney general disapproves the acquisition and there is a judicial determination that the acquisition is not in the public interest; or
- (4) The hospital is not fulfilling its commitment under section 323D-77 or is not following procedures or safeguards required under section 323D-77(4).

This section does not limit the right to a hearing or the right of appeal for a hospital from such decision. [L 1998, c 257, pt of §1]

" **[\$323D-81] Prior acquisitions.** Any acquisition of a hospital before July 20, 1998 and any acquisition in which an application for a certificate of need has been granted by the agency before July 20, 1998 is not subject to this part. [L 1998, c 257, pt of §1]



### Revision Note

"July 20, 1998" substituted for "the effective date of this part".

" **§323D-82 Maintenance of services.** A person who has acquired or is engaged in the acquisition of a hospital shall not substantially reduce or eliminate direct patient care services at the hospital below the levels at which those services were available at the time of the acquisition, without first giving written notice of the planned reduction or elimination to the agency and receiving the agency's approval, prior to implementing the reduction or elimination of services. [L 1998, c 257, pt of §1; am L 1999, c 18, §6]

" **[§323D-83] Statutory authority.** No provision of this part shall derogate from the common law or statutory authority of the attorney general. [L 1998, c 257, pt of §1]