

JAN 17 2024

A BILL FOR AN ACT

RELATING TO HEALTH.

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

1 SECTION 1. The legislature finds that certificate of need
2 laws are state regulatory mechanisms for approving major capital
3 expenditures and projects for certain health care facilities.
4 In a state with a certificate of need program, a health planning
5 agency or other entity must approve the creation of new health
6 care facilities or the expansion of an existing facility's
7 services in a specified area.

8 The legislature further finds that the primary aim of
9 certificate of need programs is to control health care costs by
10 restricting duplicative services and determining whether new
11 capital expenditures meet a community need. The legislature
12 finds, however, that there is mounting evidence from health
13 economists, regulatory economists, and antitrust lawyers showing
14 that these programs fail to achieve their intended goals, and
15 instead stifle competition by protecting incumbent providers and
16 creating a burdensome approval process for establishing new
17 facilities and services. Therefore, in the past several years,



1 many states have introduced or enacted legislation to repeal or
2 modify their existing certificate of need programs.

3 The legislature also finds that the State's certificate of
4 need program covers twenty-eight health care services, which is
5 the most restrictive in the nation, thereby limiting access to,
6 degrading quality of, and increasing the cost of health care in
7 the State.

8 Accordingly, the purpose of this Act is to repeal the
9 State's certificate of need program to improve both the quality
10 of and access to health care in the State while lowering costs.

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

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



1 development committee of the statewide council, and the
2 appropriate subarea health planning council. The administrator
3 shall be the chairperson of the reconsideration committee. A
4 request for a public hearing shall be deemed by the
5 reconsideration committee to have shown good 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 other bases for a public hearing that the
15 state agency determines constitutes good causes; or

16 (5) The decision of the administrator differs from the
17 recommendation of the statewide council.

18 A request for a hearing shall be received within ten working
19 days of the state agency decision."

20 SECTION 3. Section 323D-2, Hawaii Revised Statutes, is
21 amended as follows:



1 1. By amending the definition of "capital expenditure" to
2 read:

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

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 2. By repealing the definition of "applicant":

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

6 3. By repealing the definition of "certificate of need":

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

11 4. By repealing the definition of "review panel":

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

14 SECTION 4. Section 323D-12, Hawaii Revised Statutes, is
15 amended by amending subsection (a) to read as follows:

16 "(a) The state agency shall:

17 (1) Have as a principal function the responsibility for
18 promoting accessibility for all the people of the
19 State to quality health care services at reasonable
20 cost. The state agency shall conduct [~~such~~] studies
21 and investigations as may be necessary as to the



1 causes of health care costs, including inflation. The
2 state agency may contract for services to implement
3 this paragraph. ~~[The certificate of need program~~
4 ~~mandated under part V shall serve this function.]~~ The
5 state agency shall promote the sharing of facilities
6 or services by health care providers whenever possible
7 to achieve economies and shall restrict unusual or
8 unusually costly services to individual facilities or
9 providers where appropriate;

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

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

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



1 SECTION 5. Section 323D-13.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "~~{}~~§323D-13.5~~{}~~ **Disqualification from position or**
4 **membership.** The chairpersons of the statewide council~~{}~~ and
5 the subarea health planning councils ~~[and the review panel,]~~
6 shall not be employed by or married to health care providers."

7 SECTION 6. Section 323D-14, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§323D-14 Functions; statewide health coordinating**
10 **council.** The statewide council shall:

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



1 ~~(B)~~ The] state agency's making of findings as to the
2 appropriateness of those institutional and
3 noninstitutional health services offered in the
4 State~~(-)~~, before the findings are made final."

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

7 "**§323D-18 Information required of providers.** Providers of
8 health care doing business in the State shall submit [~~such~~]
9 statistical and other reports of information related to health
10 and health care as the state agency finds necessary to the
11 performance of its functions. The information deemed necessary
12 includes but is not limited to:

13 (1) Information regarding changes in the class of usage of
14 the bed complement of a health care facility [~~under~~
15 ~~section 323D-54(9);~~] that involve ten per cent or ten
16 beds of existing licensed bed types, whichever is
17 less, of a facility's total existing licensed beds
18 within a two-year period;

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

20 ~~(3)]~~ (2) Projects that are wholly dedicated to meeting the
21 State's obligations under court orders, including



1 consent decrees [~~, under section 323D-54(10);~~] that
2 have already determined that need for the projects
3 exists;

4 [~~(4)~~] (3) Replacement of existing equipment with an updated
5 or modern-day equivalent [~~under section 323D-54(11);~~];

6 [~~(5)~~] (4) Primary care clinics under the expenditure
7 thresholds [~~under section 323D-54(12);~~] referenced in
8 section 323D-2; and

9 [~~(6)~~] (5) Equipment and services related to that equipment,
10 that are primarily intended for research purposes as
11 opposed to usual and customary diagnostic and
12 therapeutic care."

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

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

19 (1) Identify and recommend to the state agency and the
20 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
9 council[-];
10 [~~4~~] ~~Advise the state agency in the administration of the~~
11 ~~certificate of need program for their respective~~
12 ~~subareas.~~
13 ~~5~~] (4) Advise the state agency on the cost of
14 reimbursable expenses incurred in the performance of
15 their functions for inclusion in the state agency
16 budget[-];
17 [~~6~~] (5) Advise the state agency in the performance of its
18 specific functions[-];
19 [~~7~~] (6) Perform other such functions as agreed upon by
20 the state agency and the respective subarea
21 councils[-]; and



1 ~~(8)~~ (7) Each subarea health planning council shall
2 recommend for gubernatorial appointment at least one
3 person from its membership to be on the statewide
4 council."

5 SECTION 9. Section 323D-73, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "~~{}~~**§323D-73**~~{}~~ **Notice; procedures.** (a) Within five
8 working days after receipt of a complete application under
9 section 323D-72, the agency shall give public notice of the
10 application in the affected county or counties where the
11 hospital is located and shall notify by first-class mail any
12 person who has requested notice of the filing of such
13 applications. The public notice shall state that a completed
14 application has been received, state the names of the parties to
15 the agreement, describe the contents of the application, and
16 state the date by which a person may submit written comments
17 about the application to the agency.

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



1 Within twenty days after receiving a complete application,
2 the attorney general shall determine whether a review of the
3 application in accordance with section 323D-76 is appropriate
4 and notify the applicant if a review is warranted. If the
5 attorney general determines that a review is unnecessary or not
6 appropriate, then none of the other provisions of this part
7 applicable to review by the attorney general shall apply.

8 ~~[(c) For acquisitions which require approval from the
9 agency under this part and a certificate of need, the applicant
10 shall submit a single application for both purposes and the
11 application shall be reviewed under a single unified review
12 process by the agency. Following the single unified review
13 process, the agency shall simultaneously issue its decision
14 regarding the certificate of need and its decision for purposes
15 of the sale of a hospital under this part.]"~~

16 SECTION 10. Section 323D-74, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) The agency, after consultation with the attorney
19 general, shall, if appropriate, hold a public hearing during the
20 course of review, which hearing may be held jointly with ~~[the
21 certificate of need review panel or]~~ the statewide health



1 coordinating council, and in which any person may file written
 2 comments and exhibits or appear and make a statement. The
 3 agency or the attorney general may subpoena additional
 4 information or witnesses, require and administer oaths, require
 5 sworn statements, take depositions, and use related discovery
 6 procedures for purposes of the hearing and at any time [~~prior~~
 7 ~~to~~] before making a decision on the application."

8 SECTION 11. Section 323D-75, Hawaii Revised Statutes, is
 9 amended by amending subsection (d) to read as follows:

10 "(d) Any affected person may appeal a final decision by
 11 the agency to the reconsideration committee created under
 12 section [~~323D-47 under procedures substantially similar to those~~
 13 ~~for appeals of health care certificate of need decisions...The~~
 14 ~~reconsideration committee shall have the same powers and duties~~
 15 ~~with respect to appeals under this part as exist for appeals to~~
 16 ~~the reconsideration committee regarding issuance of certificates~~
 17 ~~of need.] 323D- . The findings, conclusions, and decisions of
 18 the reconsideration committee shall constitute the determination
 19 of the agency. The agency, the applicant, or any affected
 20 person who has intervened in the matter before the~~



1 reconsideration committee may seek judicial review of any agency
2 determination."

3 SECTION 12. Section 323F-51, Hawaii Revised Statutes, is
4 amended by amending the definition of "private entity" to read
5 as follows:

6 ""Private entity" means a business organization duly
7 authorized to transact business in the State that:

- 8 (1) [~~Has a certificate of need to operate~~] Operates one or
9 more licensed hospitals in the State [~~obtained from~~
10 ~~the state health planning and development agency~~
11 ~~pursuant to part V of chapter 323D~~]; or
12 (2) Is the sole member of a nonprofit management entity or
13 hospital that [~~has a certificate of need to operate~~]
14 operates one or more licensed hospitals in the State
15 [~~obtained from the state health planning and~~
16 ~~development agency pursuant to part V of chapter~~
17 ~~323D~~]."

18 SECTION 13. Section 323F-52, Hawaii Revised Statutes, is
19 amended by amending subsection (a) to read as follows:

20 "(a) Notwithstanding any other law to the contrary,
21 including but not limited to section 27-1[~~7~~]; section 76-16(b)



1 and other sections of chapter 76[~~7~~]; chapters 78, 89, 89A, 89C,
2 and 171[~~7, part V of chapter 323D,~~]; and sections 323F-11 and
3 323F-31, the governor, with the assistance of the chief
4 executive officer of the corporation, and the regional chief
5 executive officer of the Maui regional system, or their
6 designees, shall negotiate with a private entity to transfer the
7 right and responsibility to manage, operate and otherwise
8 provide health care services at one or more facilities of the
9 Maui regional system, including Maui memorial medical center,
10 Kula hospital and clinic, and Lanai community hospital, to a
11 nonprofit management entity wholly-owned by the private entity;
12 provided that the private entity submitted a statement of
13 interest in response to a notice published in accordance with
14 section 1-28.5 by the Maui regional system board, inviting
15 private entities to submit statements of interest in acquiring
16 the right and responsibility to manage, operate and otherwise
17 provide health care services in one or more of the Maui regional
18 system's facilities."

19 SECTION 14. Section 323D-74, Hawaii Revised Statutes, is
20 amended by amending subsection (a) to read as follows:



1 "(a) The agency, after consultation with the attorney
2 general, shall, if appropriate, hold a public hearing during the
3 course of review, which hearing may be held jointly with [~~the~~
4 ~~certificate of need review panel or~~] the statewide health
5 coordinating council, and in which any person may file written
6 comments and exhibits or appear and make a statement. The
7 agency or the attorney general may subpoena additional
8 information or witnesses, require and administer oaths, require
9 sworn statements, take depositions, and use related discovery
10 procedures for purposes of the hearing and at any time [~~prior~~
11 ~~to~~] before making a decision on the application."

12 SECTION 15. Chapter 323D, part V, Hawaii Revised Statutes,
13 is repealed.

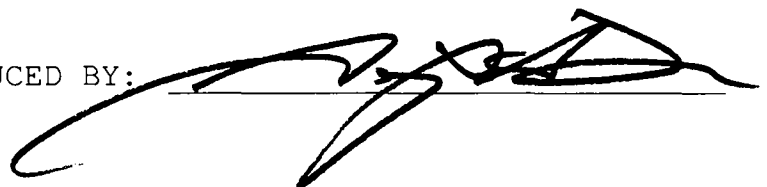
14 SECTION 16. This Act does not affect rights and duties
15 that matured, penalties that were incurred, and proceedings that
16 were begun before its effective date.

17 SECTION 17. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 18. This Act shall take effect upon its approval.

20

INTRODUCED BY: _____

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S.B. NO. 2123

Report Title:

Health; Certificate of Need Program; Repeal

Description:

Repeals the Certificate of Need Program. Makes conforming amendments.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

