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## A BILL FOR AN ACT

RELATING TO HEALTH CARE.

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

1           SECTION 1. The legislature finds that certificate of need  
2 programs are state-level regulatory programs that require  
3 approval from a state health planning and development agency for  
4 construction, expansion, and major capital expenditures by  
5 health care facilities and services. Hawaii's certificate of  
6 need law, codified in part V of chapter 323D, Hawaii Revised  
7 Statutes, was established in 1975 in response to the National  
8 Health Planning and Resources Development Act of 1974, which  
9 conditioned the award of federal public health service grants  
10 upon a state's adoption of such regulatory measures. In 1987,  
11 the federal mandate and funding provisions of National Health  
12 Planning and Resources Development Act were repealed and since  
13 then, fifteen states and the District of Columbia have dropped  
14 their certificate of need programs while several other states  
15 have since narrowed the application of their certificate of need  
16 laws to apply to only certain types of facilities.



1           The legislature further finds that Hawaii law requires the  
2 state health planning and development agency to approve a  
3 certificate of need for the construction, expansion, alteration,  
4 conversion, development, initiation, or modification of all  
5 health care facilities or health care services in the State.  
6 The law is intended to provide a coordinated system that links  
7 statewide planning for health services with facilities  
8 development. Certificate of need programs are seen as an  
9 unnecessary barrier to entry into the health care market, doing  
10 more harm than good for reasons such as:

- 11           (1) Restricting free and open competition;
- 12           (2) Stifling market innovation and improvements in the  
13           delivery of better health care by limiting  
14           competition;
- 15           (3) Limiting consumer choice, which results in stifling  
16           price competition among existing health care  
17           facilities;
- 18           (4) Diminishing quality performance among health care  
19           providers;



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1 (5) Removing incentives for established providers to  
2 reduce costs, and not achieving its main objective of  
3 controlling health care costs; and

4 (6) Inconsistency in the administration of the program.

5 The legislature additionally finds that the COVID-19  
6 pandemic highlighted the urgent need for reform of the  
7 certificate of need program. Without the restrictive burden of  
8 a certificate of need, providers will be able to determine  
9 whether new facilities should be built or existing facilities  
10 should be expanded. Additionally, in a recent study of states  
11 the Mercatus Center found that after five years, hospital  
12 charges were 5.5 per cent lower than they would have been with  
13 certificate of need laws in effect.

14 The legislature believes that national health care reform  
15 and other changes taking place in the health care marketplace  
16 make it appropriate to examine the relevance of Hawaii's  
17 certificate of need program and its effects on health care  
18 access, quality, and costs.

19 Therefore, the purpose of this Act is to repeal Hawaii's  
20 certificate of need requirement for all health care facilities  
21 and services except nursing homes, hospices, intermediate care



1 facilities for individuals with intellectual disabilities, and  
2 ambulance service providers.

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

5 1. By amending the definition of "health care facility"  
6 and "health care service" to read:

7 "~~Health care facility" and "health care service" include~~  
8 ~~any [program, institution, place, building, or agency, or~~  
9 ~~portion thereof, private or public, other than federal~~  
10 ~~facilities or services, whether organized for profit or not,~~  
11 ~~used, operated, or designed to provide medical diagnosis,~~  
12 ~~treatment, nursing, rehabilitative, or preventive care to any~~  
13 ~~person or persons. The terms include, but are not limited to,~~  
14 ~~health care facilities and health care services commonly~~  
15 ~~referred to as hospitals, facilities that provide inpatient~~  
16 ~~medical care and other related services for surgery or acute~~  
17 ~~medical conditions or injuries (usually for a short-term illness~~  
18 ~~or condition), extended care and rehabilitation centers, nursing~~  
19 ~~homes, skilled nursing facilities, intermediate care facilities,~~  
20 ~~hospices for the terminally ill that require licensure or~~  
21 ~~certification by the department of health, kidney disease~~



1 ~~treatment centers including freestanding hemodialysis units,~~  
2 ~~outpatient clinics, organized ambulatory health care facilities,~~  
3 ~~emergency care facilities and centers, home health agencies,~~  
4 ~~health maintenance organizations, and others providing similarly~~  
5 ~~organized services regardless of nomenclature.] nursing home,~~  
6 ~~hospice, intermediate care facility for individuals with~~  
7 ~~intellectual disabilities, or ambulance service provider."~~

8 2. By amending the definition of "state health services  
9 and facilities plan" to read:

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

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

15 "(a) The state agency shall:

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



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

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

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

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

20 SECTION 4. Section 323D-15, Hawaii Revised Statutes, is  
21 amended to read as follows:



1           "**§323D-15 State health services and facilities plan.**

2     There shall be a state health services and facilities plan which  
3     shall address the health care facility and service needs of the  
4     State[, ~~including inpatient care, health care facilities, and~~  
5     ~~special needs~~]. The plan shall depict the most economical and  
6     efficient system of care commensurate with adequate quality of  
7     care, and shall include standards for utilization of health care  
8     facilities and major medical equipment. The plan shall provide  
9     for the reduction or elimination of underutilized, redundant, or  
10    inappropriate health care facilities and health care services."

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

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

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



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

13           SECTION 6. 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 the planning of health care facilities and health care services  
18 for the geographical subarea it serves. In addition, the  
19 subarea health planning councils shall:

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





- 1            respective subareas with respect to the preparation of  
2            the state plan[-];  
3            (2) Provide specific recommendations to the state agency  
4            and the council regarding the highest priorities for  
5            health services and resources development[-];  
6            (3) Review the state health services and facilities plan  
7            as it relates to the respective subareas and make  
8            recommendations to the state agency and the  
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) Advise the state agency on the cost of reimbursable  
14           expenses incurred in the performance of their  
15           functions for inclusion in the state agency budget[-];  
16           (6) Advise the state agency in the performance of its  
17           specific functions[-];  
18           (7) Perform other [~~such~~] functions as agreed upon by the  
19           state agency and the respective subarea councils[-];  
20           and



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

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

7           "**§323D-49 Certificates of need; licenses and permits.**

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

19          ~~[(b)]~~ ~~No building permit shall be issued by any county or~~  
20          ~~state officer for the development, construction, expansion,~~  
21          ~~alteration, conversion, initiation, or modification of an~~



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

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

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

18 SECTION 9. Section 323D-53, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 "**§323D-53 Periodic reports from health care facilities.**  
21 Any health care facility [~~or business~~] subject to regulation



1 under this part shall, at the request of the state agency,  
2 supply [~~such~~] information to the state agency [~~as~~] that is  
3 necessary to carry out the purposes of this chapter, including  
4 but not limited to:

- 5 (1) Periodic reports from holders of certificates of need  
6 respecting the development of the proposals for which  
7 certificates have been issued,
- 8 (2) Master plans, feasibility studies, and other long-  
9 range plans and studies,
- 10 (3) Financial information, and
- 11 (4) Utilization information."

12 SECTION 10. Section 323D-54, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 **"§323D-54 Exemptions from certificate of need**

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

- 17 (1) Offices of physicians, dentists, or other  
18 practitioners of the healing arts in private practice  
19 as distinguished from organized ambulatory health care  
20 facilities, except in any case of purchase or  
21 acquisition of equipment attendant to the delivery of



- 1 health care service and the instruction or supervision  
2 for any private office or clinic involving a total  
3 expenditure in excess of the expenditure minimum;
- 4 (2) Laboratories, as defined in section 321-11(12), except  
5 in any case of purchase or acquisition of equipment  
6 attendant to the delivery of health care service and  
7 the instruction or supervision for any laboratory  
8 involving a total expenditure in excess of the  
9 expenditure minimum;
- 10 (3) Dispensaries and first aid stations located within  
11 business or industrial establishments and maintained  
12 solely for the use of employees; provided such  
13 facilities do not regularly provide inpatient or  
14 resident beds for patients or employees on a daily  
15 twenty-four-hour basis;
- 16 (4) Dispensaries or infirmaries in correctional or  
17 educational facilities;
- 18 (5) Dwelling establishments, such as hotels, motels, and  
19 rooming or boarding houses that do not regularly  
20 provide health care facilities or health care  
21 services;



- 1           (6) Any home or institution conducted only for those who,  
2           pursuant to the teachings, faith, or belief of any  
3           group, depend for healing upon prayer or other  
4           spiritual means;
- 5           (7) Dental clinics;
- 6           (8) Nonpatient areas of care facilities such as parking  
7           garages and administrative offices;
- 8           (9) Bed changes that involve ten per cent or ten beds of  
9           existing licensed bed types, whichever is less, of a  
10          facility's total existing licensed beds within a two-  
11          year period;
- 12          (10) Projects that are wholly dedicated to meeting the  
13          State's obligations under court orders, including  
14          consent decrees, that have already determined that  
15          need for the projects exists;
- 16          (11) Replacement of existing equipment with its modern-day  
17          equivalent;
- 18          (12) Primary care clinics under the expenditure thresholds  
19          referenced in section 323D-2;
- 20          (13) Equipment and services related to that equipment, that  
21          are primarily invented and used for research purposes



- 1 as opposed to usual and customary diagnostic and  
2 therapeutic care;
- 3 (14) Capital expenditures that are required:
- 4 (A) To eliminate or prevent imminent safety hazards  
5 as defined by federal, state, or county fire,  
6 building, or life safety codes or regulations;
- 7 (B) To comply with state licensure standards;
- 8 (C) To comply with accreditation standards,  
9 compliance with which is required to receive  
10 reimbursements under Title XVIII of the Social  
11 Security Act or payments under a state plan for  
12 medical assistance approved under Title XIX of  
13 such Act;
- 14 (15) Extended care adult residential care homes and  
15 assisted living facilities; ~~[or]~~
- 16 (16) Other facilities or services that the agency through  
17 the statewide council chooses to exempt, by rules  
18 pursuant to section 323D-62~~[+]~~; or
- 19 (17) Any facility or service other than a nursing home,  
20 hospice, intermediate care facility for individuals



1           with intellectual disabilities, or ambulance service  
2           provider."

3           SECTION 11. Section 325-20, Hawaii Revised Statutes, is  
4 amended by amending subsection (b) to read as follows:

5           "(b) Whenever used in this section, unless a different  
6 meaning clearly appears from the context:

7           "Dangerous disease" means any illness or health condition  
8 that might pose a substantial risk of a significant number of  
9 human fatalities or incidents of permanent or long-term  
10 disability.

11           "Department" means the department of health.

12           "Director" means the director of health.

13           "Epidemic" means the occurrence of cases of an illness  
14 clearly in excess of normal expectancy, as determined by the  
15 director.

16           "Health care facility" [~~means a facility as defined in~~  
17 ~~section 323D-2.~~

18           ~~"Health care provider" means a provider as defined in~~  
19 ~~section 323D-2.]~~ "health care provider" include any program,  
20 institution, place, building, or agency, or portion thereof,  
21 private or public, other than federal facilities or services,





1 whether organized for profit or not, used, operated, or designed  
2 to provide medical diagnosis, treatment, nursing,  
3 rehabilitative, or preventive care to any person or persons.  
4 The terms include but are not limited to health care facilities  
5 and health care services commonly referred to as hospitals,  
6 facilities that provide inpatient medical care and other related  
7 services for surgery or acute medical conditions or injuries  
8 (usually for a short-term illness or condition), extended care  
9 and rehabilitation centers, nursing homes, skilled nursing  
10 facilities, intermediate care facilities, hospices for the  
11 terminally ill that require licensure or certification by the  
12 department of health, kidney disease treatment centers including  
13 freestanding hemodialysis units, outpatient clinics, organized  
14 ambulatory health care facilities, emergency care facilities and  
15 centers, home health agencies, health maintenance organizations,  
16 and others providing similarly organized services regardless of  
17 nomenclature."

18 SECTION 12. Sections 302A-853(a), 325-2.5(h), 325-16(h),  
19 325-101, 327L-1, 431:13-108(l), 453-3, 461-1, 489-2, 622-58(d),  
20 671-1, and 707-711(1)(j), Hawaii Revised Statutes, are amended



1 by substituting the phrase "section 325-20(b)" wherever the  
2 phrase "section 323D-2" appears, as the context requires.

3 SECTION 13. No later than January 1, 2026, the state  
4 health planning and development agency shall:

5 (1) Propose amendments to the state health services and  
6 facilities plan to conform with the amendments made by  
7 this Act; and

8 (2) Make the proposed state health services and facilities  
9 plan available in the same manner as proposed rules  
10 pursuant to section 91-2.6, Hawaii Revised Statutes.

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

14 SECTION 15. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16 SECTION 16. This Act shall take effect upon its approval.  
17

INTRODUCED BY: *Samuel S. Kay*

JAN 09 2025



# H.B. NO. 11

**Report Title:**

Department of Health; Certificate of Need; Health Care Facilities; Health Care Services

**Description:**

Eliminates the certificate of need requirement for all health care facilities and health care services except for nursing homes, hospices, intermediate care facilities for individuals with intellectual disabilities, and ambulance service providers.

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

