

A Bill for an Act Relating to Health Planning.

*Be It Enacted by the Legislature of the State of Hawaii:*

**SECTION 1. Purpose.** The legislature finds that Public Law 93-641, the National Health Planning and Resources Development Act of 1974, will have a direct impact on health planning approaches and processes in the State. The impetus for the new health planning and resources development act was based on the federal government's assessment that there existed a need to strengthen and coordinate planning for personal health services and facilities development. Prior to the enactment of Public Law 93-641, health planning activities were funded under section 314(a) and 314(b) of the Public Health Services Act. Such activities have been reported to be only marginally successful. Among the reasons given for the failure of the present comprehensive health planning activities and programs are inadequate statutes, inadequate funding, and inadequate authority to implement recommendations.

It is further indicated that the greatest contributor to the costs of medical services is the investment in costly health care resources such as facilities and equipment. There is evidence that overbuilding of facilities has occurred in many areas.

The new planning legislation would provide a coordinated system of health planning linking planning for health services with facilities development. The key factor for state consideration is the process of health planning. Under the concept of the new federal statute, local input into health planning would be generated through the designation of health service areas which would be served by health systems agencies. The state health plan would be an integration and coordination of local needs within state guidelines. In addition, accompanying the health plan would be a state medical facilities plan which would establish facilities development priorities based on the state health plan.

As intended by Congress, Public Law 93-641 would replace the Comprehensive Health Planning, Regional Medical Program and the Hill-Burton authorities which presently are ongoing programs in the State.

The purpose of this Act is to amend state law to conform with the requirements for federal funding in health planning and resources development under Public Law 93-641.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

## “CHAPTER HEALTH PLANNING AND RESOURCES DEVELOPMENT

### PART I. GENERAL PROVISIONS

**Sec. -1 Purpose.** The purpose of this chapter is to establish a health planning and resources development program to assure the people of the State accessibility to quality health care through the development of health delivery systems.

**Sec. -2 Definitions.** As used in this chapter:

- (1) “Annual implementation plan” means the annual program plan pursuant to section -19.
- (2) “Health service area” means a geographic area designated by the governor and as accepted or revised by the secretary for effective planning and development of health services pursuant to Public Law 93-641, section 1511(b).
- (3) “Health systems agency” means an agency with primary responsibility for health planning in a health service area designated pursuant to Public Law 93-641.
- (4) “Health systems plan” means the health plan for the development of health services, manpower, and facilities development to meet identified needs of the health service areas and other requirements of Public Law 93-641 and regulations established thereunder.
- (5) “Secretary” means the secretary of the United States Department of Health, Education and Welfare.
- (6) “State agency” means the state health planning and development agency established in section -11.
- (7) “State health plan” means the comprehensive, coordinated plan for the development of health services in the State prepared by the statewide council.
- (8) “State medical facilities plan” means the comprehensive medical facilities plan pursuant to section -31.
- (9) “Statewide council” means the statewide health coordinating council established in section -13.

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

**Sec. -11 State health planning and development agency.** There is es-

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. The state agency shall administer the state health planning activities pursuant to Public Law 93-641 or other subsequent Acts of Congress which may amend, repeal, or succeed Public Law 93-641.

**Sec. -12 Functions; state agency.** The state agency shall:

- (1) Conduct the health planning activities of the State and implement those parts of the state health plan and plans of the health systems agencies within the State which relate to state government.
- (2) Prepare, review, and annually revise the preliminary state health plan pursuant to Public Law 93-641, section 1523(a) (2).
- (3) Assist the statewide council in reviewing the state medical facilities plan pursuant to section -31.
- (4) Administer the state certificate of need program pursuant to part IV of this chapter and serve as designated planning agency under Title XI, Sec. 1122 of the Social Security Act, as amended.
- (5) Determine the need for new institutional health services proposed by health systems agencies.
- (6) Review on a periodic basis all institutional health services offered in the State respecting the appropriateness of such activities.
- (7) Do all things necessary as required by federal and state laws.

**Sec. -13 Statewide health coordinating council.** (a) There is established a statewide health coordinating council which shall be advisory to the state agency pursuant to Public Law 93-641, section 1524.

(b) The statewide council shall be appointed by the governor in accordance with section 26-34. The membership of the statewide council shall consist of:

- (1) Not less than sixteen persons appointed from lists of at least five nominees submitted to the governor by each health systems agency.
- (2) At least two representatives from each health systems agency; provided not less than one-half shall be consumers of health care and not providers of health care;
- (3) Not less than fifty-one per cent of the membership shall be consumers of health care.
- (4) Not less than one-third of the providers of health care shall be direct providers of health care.

In addition, the governor may appoint public elected and appointed officials and other representatives of governmental authorities who shall make up not more than forty per cent of the total membership of the statewide council.

(c) The statewide council shall select a chairman 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.

**Sec. -14 Functions; statewide health coordinating council.** The statewide council shall:

- (1) Coordinate and annually review the health service plan and the annual implementation plan and budget of each health systems agency and submit a report of its comments on such health services plan and annual implementation plan to the secretary as required under section 1524(c) of Public Law 93-641.
- (2) Prepare, review, and revise the state health plan.
- (3) Review annually the budget of each health systems agency and submit its comments to the secretary pursuant to section 1524(c) of Public Law 93-641.
- (4) Review applications submitted by health systems agencies for planning and medical facilities grants pursuant to sections 1516 and 1640, respectively, of Public Law 93-641, and submit a report of its comments to the secretary pursuant to section 1524(c) (4) of Public Law 93-641.
- (5) Advise the state agency on matters relating to its functions.
- (6) Review annually, approve or disapprove any state plan and any applications for funds under Public Law 93-641, the Community Mental Health Centers Act, and the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 pursuant to Public Law 93-641, section 1524(c) (6).

**Sec. -15 State health plan.** There shall be a state health plan which shall include an integration of the health systems plans of the health systems agencies within the State to provide a comprehensive and coordinated statewide health care system.

**Sec. -16 Health service areas; designation.** The governor may designate health service areas within the State pursuant to section 1511 of Public Law 93-641.

**Sec. -17 Health systems agency.** A health systems agency within a health service area shall be a nonprofit private corporation only engaged in health planning and development functions, or a public regional planning body, or a single unit of local government, as required under Public Law 93-641.

**Sec. -18 Functions; health systems agency.** The health systems agency shall be the agency with primary responsibility for health planning in its designated health service area and shall carry out such other functions required of a health systems agency under Public Law 93-641. In addition, the health systems agency shall develop and implement an annual health systems plan which shall include but not be limited to the development of health services, manpower and facilities to meet identified needs of the health service area. The health systems agency may establish subarea advisory councils to advise the governing body of the agency on the performance of its functions.

**Sec. -19 Annual implementation plan.** The health systems agency shall establish, annually review and amend, as necessary, an annual implementation plan which shall consist of a statement of goals and objectives, a list of priorities for those goals and objectives, and specific programs and projects for achieving stated goals and objectives.

**Sec. -20 Public hearings required.** In the preparation of the state

health plan and the health systems plan of health systems agencies, or any amendments of such plans, the state agency, the statewide council, and the health systems agency, as the case may be, shall conduct a public hearing on such proposed plans and shall comply with chapter 91, Public Law 93-641, and regulations established by the secretary.

**PART III. STATE MEDICAL FACILITIES**

**Sec. -31 State medical facilities plan.** The state agency shall prepare and administer a state medical facilities plan which shall be approved by the statewide council and be submitted to the secretary for approval pursuant to section 1603 of Public Law 93-641 and any regulations adopted thereunder. In addition, the state agency shall perform all duties and responsibilities required under Title XVI of Public Law 93-641.

**Sec. -13 Public hearings required.** In the preparation of the state medical facilities plan, the statewide council shall conduct public hearings on the proposed plan and shall adopt the plan under chapter 91.

**Sec. -33 Conformance with state health plan.** The state medical facilities plan shall be consistent with the state health plan.

**PART IV. CERTIFICATE OF NEED**

**Sec. -41 Definitions.** In addition to the definitions in section -2:

- (1) "Applicant" means any person, as defined in section 1-19, who applies for a certificate of need under this part.
- (2) "Certificate of need" means an authorization, when required pursuant to section -43, to construct, expand, alter, or convert a health care facility or to initiate, expand, or modify a health care service.
- (3) "Construct," "expand," "alter," "convert," "initiate," or "modify" includes the erection, building, reconstruction, modernization, improvement, 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 of supervision therefor; and studies, surveys, designs, plans, working drawings, specifications, procedures, and other actions necessary for any such undertaking, which will:
  - (A) Result in a total capital expenditure in excess of \$100,000,
  - (B) Substantially modify, decrease, or increase the scope or type of health service rendered, or
  - (C) Increase, decrease, or change the class of usage of the bed complement of a health care facility.
- (4) "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, intermediate care facilities, out-patient clinics, ambulatory care facilities, emergency care facilities and centers, community mental health and mental retardation centers, home health agencies, health maintenance organizations, and others providing similarly organized services regardless of nomenclature.

- (5) "Review panel" means the panel designated by the state agency to study applications for proposed capital expenditures by health care facilities pursuant to Public Law 92-603, section 221, and applications for certificates of need under this part.
- (6) "Substantially modify, decrease, or increase the scope or type of health service" refers to 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.

**Sec. -42 Review panel.** There is established a review panel for the purposes of reviewing applications for certificates of need. The review panel shall include but not be limited to representatives from each health service area and the chairman of the statewide council 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.

**Sec. -43 Certificates of need.** (a) No person, public or private, non-profit or for profit, shall:

- (1) Construct, expand, alter, convert, initiate, or modify a health care facility or health care service in the State which requires a total capital expenditure in excess of \$100,000; or
- (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,

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 first determined that there is a public need for the facility or the service. 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.

(c) The state agency shall, after consultation with the statewide council and the review panel, establish criteria, which shall be reviewed from time to time in order to maintain compliance with applicable federal law and the purposes of this part, which shall be considered by the state agency in its determinations on certificates of need, including, but not limited to criteria related to:

- (1) Health care needs,
- (2) The state health plan prescribed in section -15 and the state medical facilities plan pursuant to section -31,
- (3) Relationships among existing health care facilities and health care services,
- (4) Costs,
- (5) Quality of health care,

- (6) Accessibility of health care,
- (7) Feasibility with respect to financial and personnel resources, and
- (8) Availability of evaluation mechanisms, including mechanisms for supplying information to the health planning agency as require in section -44(a).

**Sec. -44 Applications for certificates of need.** (a) An applicant for a certificate of need shall file an application with the state agency which shall provide technical assistance to the applicant and, after all necessary information has been supplied by the applicant in the required number of copies, transmit the application to the appropriate individuals and public agencies.

(b) The state agency shall either approve or deny an application within ninety days after filing unless, within sixty days after filing, the state agency notifies the applicant in writing that the period for considering the application has been extended. The state agency may extend the period within which a determination shall be made on an application, if necessary for obtaining additional information about the application. If a certificate of need has not been issued or denied in writing within one hundred fifty days after filing and completion of the application, the failure of the state agency to issue or deny the certificate of need is equivalent to approval of the application, and at the request of the applicant, the state agency shall issue the certificate of need.

(c) The state agency may provide by rules adopted in conformity with chapter 91, for the issuance of certificates of need upon the unanimous recommendation by the chairman of the statewide council, the chairman of the governing body of the applicable health systems agency, and the chairman of the review panel, for those applications for which the procedures set forth in section -45 would be infeasible because of emergency or other unusual circumstances.

**Sec. -45 Review panel recommendations for issuance or denial of certificates of need.** Except as provided in section -44(c), the state agency shall refer every application for a certificate of need to the review panel. The review panel in studying each application shall consider all relevant data and information submitted by the state agency and the governing body of the applicable health systems agency, and other areawide or local bodies created under Public Law 93-641 and may request from them and from the applicant additional data and information. The review panel shall submit its recommendations with findings to the state agency within such time as the state agency prescribes.

**Sec. -46 Denial of applications; judicial review.** If an application for a certificate of need is denied, the state agency shall give notice to the applicant in writing stating the grounds for the denial. An applicant who considers himself aggrieved by the denial may appeal in the manner provided in chapter 91 to the circuit court of the circuit in which he resides or in the circuit in which the health care facility or health care service is or was planned to be located.

**Sec. -47 Certificates of need, licenses and permits.** No permit or li-

cense shall be issued by any county or state officer for the construction, expansion, alteration, conversion, initiation, or modification of a health care facility or health care service 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.

**Sec. -48 Certificates of need, penalties.** Any person who violates any provision of this part, or rules thereunder, with respect to the requirement for certificates 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.

**Sec. -49 Exemptions from certificate of need requirements.** Nothing in this part or rules thereunder with respect to the requirement for certificates of need applies to:

- (1) Private office or clinics of physicians, dentists, or other practitioners of the healing arts or 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 therefor for any such private office or clinic or laboratory involving a total expenditure in excess of \$100,000;
- (2) Dispensaries and first aid stations located within business or industrial establishments 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;
- (3) Dwelling establishments, such as hotels, motels, and rooming or boarding houses that do not regularly provide health care facilities or health care services;
- (4) 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.

## PART V. GENERAL ADMINISTRATION

**Sec. -61 Personnel.** The administrator of the state agency shall hire necessary personnel under chapters 76 and 77 to carry out the purposes of this chapter.

**Sec. -62 Rules.** The state agency and the statewide council may adopt necessary rules for the purposes of this chapter in accordance with chapter 91."

SECTION 3. Parts II and III of chapter 323, Hawaii Revised Statutes, are repealed.

SECTION 4. The functions of the department of health under part II of chapter 323, and the state comprehensive health planning agency under part III of chapter 323 are transferred to the newly created state health planning and resources development agency established under this Act. The newly



created state health planning and resources development agency shall succeed to all of the rights and powers exercised, and all of the duties and obligations incurred by the department of health and the state health comprehensive health planning agency in the exercise of the functions transferred by this Act, whether such powers, duties, and obligations are mentioned in or granted by any law, contract, or other document. All references in any such law, contract, or document to the department of health or the state comprehensive planning agency in connection with the functions transferred shall apply to the newly created state health planning and development agency.

SECTION 5. All officers and employees of the department of health and the state comprehensive health planning agency subject to chapters 76 and 77, Hawaii Revised Statutes, whose functions are transferred by this Act shall with the same pay and classification, be transferred to positions within the newly created state health planning and development agency established in this Act or to other positions within the State for which they are eligible under the applicable personnel laws of the State, without any loss of seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege, and subsequent changes in status may be made pursuant to chapters 76 and 77, Hawaii Revised Statutes.

No employee of the State having tenure shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act. An employee of the State who does not have tenure and who may be transferred or appointed to a civil service position as a consequence of this Act shall become a civil service employee without loss of salary, seniority, prior service credit, vacation, sick leave or other employee benefits or privileges and without the necessity of examination; provided that such employee possesses the minimum qualifications for the position to which he is transferred or appointed.

SECTION 6. All records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the department of health and the state comprehensive health planning agency relating to the functions transferred to the state health planning and resources development agency in this Act shall be transferred with the functions to which they relate.

SECTION 7. No offense committed and no penalty or forfeiture incurred under parts II and III of chapter 323 shall be affected by this Act, provided that whenever any punishment, penalty, or forfeiture is mitigated by any provisions of this Act, such provision may be extended and applied to any judgment pronounced after the passage of this Act. No suit or prosecution pending at the time this Act takes effect shall be affected by this Act. The right of any administrative officer to institute proceedings for prosecution for an offense or an action to recover a penalty or forfeiture shall henceforth be vested in the administrator of the state health planning and resources development agency of his designee.

SECTION 8. It is the intent of this Act to meet the requirements of Public Law 93-641 so as not to jeopardize the receipt of any federal aid. Not-

withstanding any provisions of this Act, the Governor may adopt a state administrative program and approve such state agency rules as are found necessary for the receipt of federal aid and shall report such action to the legislature at its next session.

SECTION 9. All moneys appropriated to the department of health and the state comprehensive health planning agency relating to the functions transferred by this Act shall be transferred to the newly created state health planning and resources development agency.

SECTION 10. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 11. In the event that the Secretary of Health, Education and Welfare finds that the provisions of section 1536 of Public Law 93-641 are applicable for the State of Hawaii:

- (1) No health service area described in Section -2(2) of section 2 of this Act shall be established;
- (2) No health systems agency described in Section -2(3) of section 2 of this Act shall be established;
- (3) The state agency described in section -2(6) of Section 2 of this Act may in addition to the functions prescribed for in section -12 of Section 2 of this Act and section 1521 of Public Law 93-641, perform the functions prescribed for health systems agencies in this Act and sections 1513 and 1523 of Public Law 93-641 and be eligible to receive grants authorized by sections 1516 and 1640 of Public Law 93-641, and be eligible to receive grants authorized by sections 1516 and 1640 of Public Law 93-641, and
- (4) The governor shall appoint the statewide council prescribed by section -13(a) of Section 2 of this Act and by section 1524 of Public Law 93-641 in accordance with the regulation of the Secretary of Health, Education and Welfare; provided that section -13(b) of Section 2 of this Act shall not apply.

SECTION 12. This Act shall take effect on July 1, 1975 or at any such time as the Governor and the Secretary of the United States Department of Health, Education and Welfare have entered an agreement designating the state health planning and development agency created by this Act as the state health planning and development agency required to be designated under Public Law 93-641 and until the state health planning and development agency is properly funded as determined by the Governor. The functions of the Department of Health under part II of chapter 323 and the comprehensive health planning agency under part III of chapter 323 shall continue until such agreement has been entered and such funding has been determined.

(Approved May 30, 1975.)