

A Bill for an Act Relating to Health.

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

SECTION 1. Chapter 323D, Hawaii Revised Statutes, is amended by amending the title to read as follows:

**“[]CHAPTER 323D[]
HEALTH PLANNING AND RESOURCES
DEVELOPMENT
AND HEALTH CARE COST CONTROL”**

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

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

[(1)] “Annual implementation plan” means the annual program plan pursuant to section 323D-16.

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

“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 \$600,000 for capital expenditures, \$400,000 for replacement of major medical equipment, and \$250,000 for new major medical equipment.

“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 registered under chapter 459, podiatrist licensed under chapter 463E, psychologist certified under chapter 465, occupational therapist subject to chapter 457G, and physical therapist licensed under chapter 321.

“Organized ambulatory health care facility” means a facility not part of a hospital, which is organized and operated to provide health services to outpatients. This term includes the following facilities: clinical health centers; diagnostic centers; treatment centers; family planning clinics; family health centers; neighborhood health centers; ambulatory surgical facilities including centers for dental surgery; cosmetic surgery centers; dental clinics; optometric clinics; community mental health and mental retardation centers; outpatient mental health facilities; prenatal or abortion clinics; drug abuse or alcoholism treatment centers; facilities for the provision of outpatient physical therapy services including speech pathology; rehabilitation facilities; any provision of medical or health services by a provider of medical or health services organized as a not-for-profit or business corporation other than a professional corporation; and any provider of medical or health services which describes itself to the public as a “center”, “clinic”, or by any name other than the name of one or more of the practitioners providing these services. 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.

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

[(2)] “Secretary” means the secretary of the United States Department of Health[,] and Human Services[,] or the secretary of the federal agency that is the successor to the United States Department of Health and Human Services.

[(3)] “State agency” means the state health planning and development agency established in section 323D-11.

[(4)] “State health services and facilities plan” means the comprehensive[, coordinated] plan for the [development] economical delivery of health services in the State prepared by the statewide council.

[(5)] “Statewide council” means the statewide health coordinating council established in section 323D-13.

[(6)] “Subarea” means one of the geographic subareas designated by the state agency pursuant to section 323D-21.

[(7)] “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 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.”

SECTION 3. Section 323D-11, Hawaii Revised Statutes, is amended to read as follows:

“§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 [to meet the applicable federal requirements.] as required by law.”

SECTION 4. Section 323D-12, Hawaii Revised Statutes, is amended to read as follows:

“§323D-12 [Functions;] Health planning and development functions; state agency. [(a)] The state agency shall:

- (1) Have as a principal function the responsibility for controlling increases in health care costs. The state agency shall conduct such studies and investigations as may be necessary in the causes of health care cost inflation and annually shall recommend to the legislature measures designed to contain health care costs until such time as health care cost inflation substantially moderates. 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.
- [(1)] (2) 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 providing reasonable opportunity for the submission of written recommendations respecting the needs by the department of

health and other state agencies, designated by the governor for the purpose of making the recommendations, and] after consulting with the statewide council. [If any recommendation of any subarea health planning council is not incorporated into the state health services and facilities plan an explanation stating the reasons for nonincorporation shall be appended to that plan.

- (2)] (3) Prepare[, review at least triennially,] and revise as necessary the [preliminary] state health services and facilities plan. [The state agency shall refer the preliminary state health services and facilities plan to the department of health and other state agencies designated by the governor to review the goals and related resource requirements of the preliminary state health services and facilities plan and to make written recommendations to the state agency respecting the goals and requirements.
 - (3)] (4) Prepare, review, and revise the annual implementation plan.
 - [(4)] (5) Assist the statewide council in the performance of its functions.
 - [(5)] (6) Administer the state certificate of need program pursuant to part V [of this chapter].
 - [(6)] (7) Determine the need for new [institutional] health services proposed to be offered within the State.
 - (8) 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)] (9) 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.
 - [(8)] (10) Prepare an inventory of the health care facilities, other than federal health care facilities, located in the State and evaluate on an ongoing basis the physical condition of and need for the facilities.
 - [(9)] (11) Provide technical assistance to persons, public or private, in obtaining and filling out the necessary forms for the development of projects and programs.
 - [(10)] Do all things necessary as required by federal and state laws.
- (b) If in determining the statewide health needs or in preparing or revising the preliminary state health services and facilities plan, the state agency does not take an action proposed in a written recommendation submitted to the state agency pursuant to subsection (a)(1) or (a)(2), the state agency shall when publishing the needs or the plan make available for public inspection a written statement of its reasons for not taking the action.]”

SECTION 5. Section 323D-13, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(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 [thirty] 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 [consumer] 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[.

The statewide council shall consist of:

- (1) One representative from each subarea council established pursuant to section 323D-21.
- (2) and shall include representation from the subarea councils, business, labor, and health care providers. A majority but not more than [sixty per cent of the persons appointed by the governor] eleven of the members shall be consumers of health care who are not also providers of health care.
- [(3) Not less than one-half of the members who are providers of health care shall be direct providers of health care.
- (4) Representatives of private agencies concerned with health.
- (5) Individuals who are knowledgeable about mental health services.
- (6) A percentage of individuals who reside in nonmetropolitan areas which is equal to the percentage of residents of the State who reside in nonmetropolitan areas.
- (7) At least one member who is representative of a health maintenance organization.

Members of the statewide council who are consumers of health care and who are not providers of health care shall include individuals who represent rural and urban medically underserved populations if these populations exist in the State. In addition the total membership of the statewide council shall include representation as may be required by applicable federal law or implementing federal regulations.]”

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

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

- (1) Prepare[, review at least triennially,] and revise as necessary the state health services and facilities plan [to meet the applicable federal requirements].

- (2) Review applications for planning and medical facilities grants pursuant to applicable federal requirements, and submit a report of its comments to the secretary pursuant to applicable federal requirements.
- (3) Advise the state agency on [matters relating to its functions.] actions under section 323D-12.
- (4) Review annually and recommend approval or disapproval of any state plan and any application and any revision of a state plan or application submitted to the secretary as a condition to the receipt of any funds under allotments made to the State under the Public Health Service Act, the Community Mental Health Centers Act, section 409 of the Drug Abuse Office and Treatment Act of 1972, or the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 pursuant to the applicable federal requirements.
- (5) Appoint the review panel pursuant to section 323D-42.
- (6) Review and comment upon the following actions by the state agency before such actions are made final:
 - (A) The establishment, annual review, and amendment of the annual implementation plan.
 - (B) The development and publication of specific plans and programs for achieving the objectives established in the annual implementation plan.
 - (C) The making of grants and contracts from the area health services development fund pursuant to the applicable federal requirements.
 - (D) The making of findings as to the need for new institutional health services proposed to be offered in the State and applications for certificate of need.
 - (E) The making of findings as to the appropriateness of those institutional and [home] noninstitutional health services offered in the State [and with respect to which goals have been established in the state health services and facilities plan, pursuant to the applicable federal requirements].
 - (F) The approval or disapproval of each proposed use of federal health funds within the State, pursuant to the applicable federal requirements.”

SECTION 7. Section 323D-15, Hawaii Revised Statutes, is amended to read as follows:

“§323D-15 State health services and facilities plan. There shall be a state health services and facilities plan [pursuant to the Public Health Service

Act, as amended,] which shall [include a chapter on inpatient care and medical facilities and which shall include the special needs of the geographic subareas within the State to provide a comprehensive and coordinated statewide health care system.] 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.”

SECTION 8. Section 323D-16, Hawaii Revised Statutes, is amended to read as follows:

“**§323D-16 Annual implementation plan.** The state 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.] prepare and execute annually an implementation plan which guides the agency in achieving the system of care envisioned in the state health services and facilities plan and administering the certificate of need program. The implementation plan shall embody specific strategies for appropriateness review and other activities designed to produce economical and efficient care, including the setting of priorities for health care facilities, major medical equipment, and health care services.”

SECTION 9. Section 323D-43, Hawaii Revised Statutes, is amended to read as follows:

“**§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 which require a total capital expenditure in excess of the expenditure minimum; [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, 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 [first] determined that [there]:

- (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.

The state agency may adopt criteria for certificate of need review which are consistent with this section.

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[.

(c) The state agency shall, in cooperation with the statewide council and after consultation with the subarea councils, the review panel, health agencies, and health-related agencies, establish criteria which shall be considered by the state agency and the statewide council in their determinations on certificates of need. The state agency and the statewide council shall review the criteria from time to time in order to maintain compliance with applicable federal law and federal regulations and the purposes of this part. The criteria shall include consideration of at least the following:

- (1) The health care needs of the population to be served,
- (2) The relationship of the proposal to the state health services and facilities plan described in section 323D-15 and the annual implementation plan described in section 323D-16,
- (3) The relationship of the proposal to the long-range development plan, if any, of the applicant,
- (4) The relationship of the proposal to the existing health care system of the area,
- (5) The availability of less costly or more effective alternative methods of providing service,
- (6) The quality of the health care services proposed,
- (7) The accessibility of the health care services proposed,
- (8) The immediate and long term financial feasibility of the proposal,
- (9) The probable impact of the proposal on the costs of and charges for providing health services by the applicant,
- (10) The probable impact of the proposal on the overall costs of health services to the community,
- (11) In the case of health services proposed to be provided,
 - (A) The availability of resources, including health manpower, management personnel, and funds for capital and operating needs, for the provision of the services,

- (B) The effect of the means proposed for the delivery of the services on the clinical needs of health professional training programs in the area in which the services are to be provided,
 - (C) If the services are to be available in a limited number of facilities, the extent to which the health-profession schools in the area will have access to the services for training purposes,
 - (D) The availability of alternative uses of the resources for the provision of other health services, and
 - (E) The extent to which the proposed services will be accessible to all the residents of the area to be served by the services,
- (12) The relationship of the services proposed to ancillary or support services,
 - (13) The special needs and circumstances of those entities which provide a substantial portion of their services to people who live outside the State,
 - (14) The special needs and circumstances of health maintenance organizations,
 - (15) The special needs and circumstances of biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages,
 - (16) In the case of a construction project,
 - (A) The costs and methods of the proposed construction, including the costs and methods of energy provision, and
 - (B) The probable impact of the construction project reviewed on the costs of providing health services by the applicant and on the costs and charges to the public of providing health services by other persons,
 - (17) The availability of evaluation mechanisms for supplying information to the state agency as required in section 323D-52,
 - (18) The applicant's compliance with federal, state, or county licensure standards,
 - (19) The special circumstances of health service institutions and the need for conserving energy,
 - (20) The factors which affect the effect of competition on the supply of the health services being reviewed, pursuant to the applicable federal requirements,
 - (21) Improvements or innovations in the financing and delivery of health services which foster competition, in accordance with the applicable federal requirements, and which serve to promote quality assurance and cost effectiveness,

- (22) In the case of proposed health services or facilities, the efficiency and appropriateness of the use of existing health services or facilities similar to those proposed,
- (23) In the case of existing health services or facilities, the quality of care provided by the health services or facilities in the past,
- (24) In the case of an osteopathic or allopathic facility, the need for and the availability in the community of services and facilities for osteopathic and allopathic physicians and their patients,
- (25) The probable impact of the proposal on existing and proposed institutional training programs for doctors of medicine and osteopathy at the student, internship, and residency training levels.

(d) Criteria adopted for reviews in accordance with this section may vary according to the purpose for which a particular review is being conducted or the type of health service being reviewed.] and expenditures for the project shall not exceed the maximum amount of the expenditures approved in the certificate of need.”

SECTION 10. Section 323D-44, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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. The statement shall include, in addition to an estimate of the total cost, a projection of the effect the facility or service will have on the following: total patient care budget; total number of admissions; total number of patient days; total number of outpatient visits; and such other information as the state agency may request. The statement shall include cost projections for at least the first and fifth 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.”

SECTION 11. Section 323D-45, Hawaii Revised Statutes, is amended to read as follows:

“§323D-45 Subarea council, review panel, and statewide council recommendations for issuance or denial of certificates of need. (a) Except 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[, and the statewide council in studying each application] shall consider all relevant data and information submitted by the state agency, subarea councils, [the review panel,] 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 [each application] 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.

(b) At a public meeting in which a subarea council[,] or the review panel[, or the statewide council] 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.”

SECTION 12. Section 323D-45.2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Notwithstanding section [323D-43(c),] 323D-43, the state agency shall approve an application for a certificate of need from a health maintenance organization or a health care facility which is controlled, directly or indirectly, by a health maintenance organization, if the state agency finds, in accordance with criteria prescribed by the secretary by regulation, that:

- (1) Approval of the application is required to meet the needs of the members of the health maintenance organization and of the new

members which the organization can reasonably be expected to enroll, and

- (2) The health maintenance organization is unable to provide, through services or facilities which can reasonably be expected to be available to the organization, its institutional health services in a reasonable and cost-effective manner which is consistent with the basic method of operation of the organization and which makes the services available on a long-term basis through physicians and other health professionals associated with the organization.”

SECTION 13. Section 323D-45.3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Notwithstanding section [323D-43(c),] 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, or
- (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.”

SECTION 14. Section 671-1, Hawaii Revised Statutes, is amended by amending the definition of “health care provider” to read as follows:

- “(1) “Health care provider” means a physician or surgeon licensed under chapter 453, a physician or a physician and surgeon licensed under chapter 460, a health care facility as defined in section [323D-41(7),] 323D-2, and the employees of any of them. Health care provider shall not mean any nursing institution or nursing service conducted by and for those who rely upon treatment by spiritual means through prayer alone, or employees of such institution or service.”

SECTION 15. Section 323D-12.5, Hawaii Revised Statutes, is repealed.

SECTION 16. Section 323D-41, Hawaii Revised Statutes, is repealed.

SECTION 17. Section 323D-46.1, Hawaii Revised Statutes, is repealed.

SECTION 18. Notwithstanding section 323D-13, Hawaii Revised Statutes, the terms of members on the statewide health coordinating council on July 1, 1984 or appointed to the council after June 30, 1984, but prior to July 1, 1985, shall terminate on June 30, 1985. After June 30, 1985, members of the statewide health coordinating council shall be appointed in accordance with section 323D-13, Hawaii Revised Statutes; provided that the first appointees after June 30, 1985:

- (1) Shall be considered initial appointees for the purposes of establishing staggered terms under section 26-34, Hawaii Revised Statutes; and
- (2) Shall be appointed to terms beginning on July 1, 1985 but ending on December 31 of the appropriate years, notwithstanding section 26-34, Hawaii Revised Statutes.

SECTION 19. There is appropriated out of the general revenues of the State of Hawaii the sum of \$216,000, or so much thereof as may be necessary for fiscal year 1984-1985, to implement the provisions of this Act.

The sum appropriated shall be expended by the state health planning and development agency for the purposes of this Act.

SECTION 20. Statutory material to be repealed is bracketed. New material is underscored.¹

SECTION 21. This Act shall take effect on July 1, 1984, but shall not apply to any certificate of need application filed with the state health planning and development agency which the agency has determined to be complete prior to the effective date of this Act.

(Approved June 5, 1984.)

Note

1. Edited pursuant to HRS §23G-16.5.