
A BILL FOR AN ACT

RELATING TO CERTIFICATES OF NEED.

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

1 SECTION 1. Chapter 323D, Hawaii Revised Statutes, is
2 amended by adding a new section to part V to be appropriately
3 designated and to read as follows:

4 "§323D- State agency review of subarea council and
5 statewide council recommendations for issuance or denial of
6 certificate of need. In reviewing the recommendations of the
7 respective subarea council and the statewide council regarding a
8 certificate of need application, the state agency shall give
9 greater weight to the recommendations of the respective subarea
10 council if those recommendations conflict with the
11 recommendations of the statewide council, unless the state
12 agency finds that good cause exists to reject those
13 recommendations."

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

16 "§323D-1 [~~Purpose~~] General purpose and objectives. (a)

17 The purpose of this chapter is to establish a health planning
18 and resources development program to promote accessibility for



1 all the people of the [~~State~~] state to quality health care
2 services at reasonable cost.

3 (b) The health planning and resources development program
4 shall:

5 (1) Make broad policy determinations with respect to
6 development of the health care industry, and to
7 stimulate through research and demonstration projects,
8 those industrial and economic development efforts that
9 offer the most immediate promise of expanding the
10 health care industry, and the types of health care
11 services available in the state, and of further
12 diversifying the State's economy;

13 (2) Determine through technical and research studies, the
14 profit potential of new or expanded undertakings in
15 the health care industry and high technology medical
16 research;

17 (3) Disseminate information to assist current health care
18 providers and high technology medical researchers in
19 this state; to attract new health care providers and
20 high technology medical researchers to this state; and
21 to encourage capital investment in existing and new



1 areas of health care services and high technology
2 medical research;

3 (4) Encourage innovation in and research into new medical
4 technologies to improve the lives of the state's
5 residents, as well as encourage others from within
6 this country and from the world to seek medical
7 treatment from health care providers and high
8 technology medical researchers in Hawaii;

9 (5) Enter into contracts as may be necessary or advisable
10 to accomplish the foregoing purpose and objectives;

11 (6) Work collaboratively with other state departments and
12 agencies and with other governmental entities
13 operating both within and outside the state to
14 accomplish the foregoing purpose and objectives; and

15 (7) Disseminate information developed for or by the
16 program pertaining to the development of the state's
17 health care providers and high technology medical
18 researchers to assist the present health care and
19 medical research industry in the state; to attract new
20 industry and investment in this state in highly
21 advanced medical technologies; and to lead this state
22 into becoming the nation's vanguard of cutting-edge



1 medical technology, particularly in the Asia-Pacific
2 region."

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

5 "**§323D-2 Definitions.** As used in this chapter[+], unless
6 the context requires otherwise:

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

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



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

- 7 (1) Cost of studies, surveys, designs, plans, working
8 drawings, specifications, and other preliminaries
9 necessary for construction, expansion, alteration,
10 conversion, development, initiation, or modification;
- 11 (2) Fair market values of facilities and equipment
12 obtained by donation or lease or comparable
13 arrangements as though the items had been acquired by
14 purchase; and
- 15 (3) Fair market values of facilities and equipment
16 transferred for less than fair market value, if a
17 transfer of the facilities or equipment at fair market
18 value would be subject to review under section 323D-
19 43.

20 "Certificate of need" means an authorization, when required
21 pursuant to section 323D-43, to construct, expand, alter, or
22 convert [~~a health care~~] an emergency room or freestanding



1 emergency care facility or to initiate, expand, develop, or
2 modify a [~~health-care~~] surface ambulance service.

3 "Construct", "expand", "alter", "convert", "develop",
4 "initiate", or "modify" includes the erection, building,
5 reconstruction, modernization, improvement, purchase,
6 acquisition, or establishment of [~~a health-care~~] an emergency
7 room or freestanding emergency care facility or [~~health-care~~]
8 surface ambulance service; the purchase or acquisition of
9 equipment attendant to the delivery of [~~health-care service~~]
10 these activities and the instruction or supervision therefor;
11 the arrangement or commitment for financing the offering or
12 development of [~~a health-care facility or health-care~~] an
13 emergency room or freestanding emergency care facility or
14 surface ambulance service; any obligation for a capital
15 expenditure by [~~a health-care facility;~~] these activities; and
16 studies, surveys, designs, plans, working drawings,
17 specifications, procedures, and other actions necessary for any
18 such undertaking, which will:

19 (1) Result in a total capital expenditure in excess of the
20 expenditure minimum,

21 (2) Substantially modify, decrease, or increase the scope
22 or type of [~~health~~] emergency room, freestanding



1 emergency care, or surface ambulance service

2 rendered[~~, or~~

3 ~~(3) Increase, decrease, or change the class of usage of~~
4 ~~the bed complement of a health care facility].~~

5 "Emergency room services" means services provided in a
6 designated unit within a hospital for the immediate treatment of
7 injury and other types of health emergencies.

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

11 ~~["Extended care adult residential care home" means an adult~~
12 ~~residential care home providing twenty-four-hour living~~
13 ~~accommodation for a fee, for adults unrelated to the licensee.~~
14 ~~The primary caregiver shall be qualified to provide care to~~
15 ~~nursing facility level individuals who have been admitted to a~~
16 ~~Medicaid waiver program, or persons who pay for care from~~
17 ~~private funds and have been certified for this type of facility.~~
18 ~~There shall be two categories of extended care adult residential~~
19 ~~care homes, which shall be licensed in accordance with rules~~
20 ~~adopted by the department of health:~~



1 ~~(1) Type I home shall consist of five or less unrelated~~
2 ~~persons with no more than two extended care adult~~
3 ~~residential care home residents; and~~

4 ~~(2) Type II home shall consist of six or more unrelated~~
5 ~~persons and one or more persons may be extended care~~
6 ~~adult residential care home residents.]~~

7 "Freestanding emergency care facility" means an
8 establishment, place, or facility structurally distinct and
9 separate from a hospital, which represents itself either through
10 advertising or name as providing emergency medical care services
11 in life-, limb-, or function-threatening conditions beyond the
12 occasional emergency that occurs in the normal course of any
13 clinical practice.

14 "Health" includes physical and mental health.

15 [~~"Health care facility" and "health care service" include~~
16 ~~any program, institution, place, building, or agency, or portion~~
17 ~~thereof, private or public, other than federal facilities or~~
18 ~~services, whether organized for profit or not, used, operated,~~
19 ~~or designed to provide medical diagnosis, treatment, nursing,~~
20 ~~rehabilitative, or preventive care to any person or persons.~~
21 ~~The terms include, but are not limited to, health care~~
22 ~~facilities and health care services commonly referred to as~~



1 ~~hospitals, extended care and rehabilitation centers, nursing~~
2 ~~homes, skilled nursing facilities, intermediate care facilities,~~
3 ~~hospices for the terminally ill that require licensure or~~
4 ~~certification by the department of health, kidney disease~~
5 ~~treatment centers including freestanding hemodialysis units,~~
6 ~~outpatient clinics, organized ambulatory health care facilities,~~
7 ~~emergency care facilities and centers, home health agencies,~~
8 ~~health maintenance organizations, and others providing similarly~~
9 ~~organized services regardless of nomenclature.~~

10 ~~"Health care provider" means a health care facility,~~
11 ~~physician, dentist licensed under chapter 448, chiropractor~~
12 ~~licensed under chapter 442, optometrist licensed under chapter~~
13 ~~459, podiatrist licensed under chapter 463E, psychologist~~
14 ~~licensed under chapter 465, occupational therapist subject to~~
15 ~~chapter 457G, and physical therapist licensed under chapter~~
16 ~~461J.~~

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



1 "Person" means an individual or a natural person, a trust
2 or estate, a society, a firm, an assembly, a partnership, a
3 corporation, a professional corporation, an association, the
4 State, any political subdivision of the State, a county, a state
5 agency or any instrumentality of the State, a county agency or
6 any instrumentality of a county.

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

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

- 16 ~~(1) General or family practice physicians;~~
17 ~~(2) General internal medicine physicians;~~
18 ~~(3) Pediatricians;~~
19 ~~(4) Obstetricians and gynecologists;~~
20 ~~(5) Physician assistants; and~~
21 ~~(6) Advanced practice registered nurses.~~



1 ~~"Review panel" means the panel established pursuant to~~
2 ~~section 323D-42.]~~

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

5 "State health services and facilities plan" means the
6 comprehensive plan for the economical delivery of health
7 services in the [~~State~~] state prepared by the statewide council.

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

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

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

14 "Substantially modify, decrease, or increase the scope or
15 type of health service" refers to the establishment of a new
16 [~~health care facility or health care service or the addition of~~
17 ~~a clinically related (i.e., diagnostic, curative, or~~
18 ~~rehabilitative) service not previously provided or the~~
19 ~~termination of such a service which had previously been~~
20 ~~provided.] emergency room, freestanding emergency care facility,
21 or surface ambulance service.~~



1 "Surface ambulance services" includes transportation of a
2 patient in any motor vehicle or watercraft specifically
3 equipped, designed, or constructed and maintained or operated
4 for the purpose of accommodating the medical needs of patients."

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

7 **"§323D-12 Health planning and development functions; state**
8 **agency.** (a) The state agency shall:

9 (1) Have as a principal function the responsibility for
10 promoting accessibility for all the people of the
11 [State] state to quality health care services at
12 reasonable cost[. ~~The state agency shall conduct such~~
13 ~~studies and investigations as may be necessary as to~~
14 ~~the causes of health care costs including inflation.~~
15 ~~The state agency may contract for services to~~
16 ~~implement this paragraph. The certificate of need~~
17 ~~program mandated under part V shall serve this~~
18 ~~function. The state agency shall promote the sharing~~
19 ~~of facilities or services by health care providers~~
20 ~~whenever possible to achieve economies and shall~~
21 ~~restrict unusual or unusually costly services to~~
22 ~~individual facilities or providers where appropriate];~~



- 1 (2) Serve as staff to and provide technical assistance and
2 advice to the statewide council and the subarea
3 councils in the preparation, review, and revision of
4 the state health services and facilities plan;
- 5 (3) Conduct the health planning activities of the State in
6 coordination with the subarea councils, implement the
7 state health services and facilities plan, and
8 determine the statewide health needs of the State
9 after consulting with the statewide council; and
- 10 (4) Administer the state certificate of need program
11 pursuant to part V.
- 12 (b) The state agency may:
- 13 (1) Prepare such reports and recommendations on Hawaii's
14 health care costs and public or private efforts to
15 reduce or control costs and health care quality as it
16 deems necessary. The report may include[?] but not be
17 limited to[?] a review of health insurance plans, the
18 availability of various kinds of health insurance and
19 malpractice insurance to consumers, and strategies for
20 increasing competition in the health insurance
21 field[?];



- 1 (2) Prepare and revise as necessary the state health
2 services and facilities plan[-];
3 (3) Prepare, review, and revise the annual implementation
4 plan[-];
5 (4) Assist the statewide council in the performance of its
6 functions[-];
7 (5) Determine the need for new health services proposed to
8 be offered within the State[-];
9 (6) Assess existing health care services and facilities to
10 determine whether there are redundant, excessive, or
11 inappropriate services or facilities and make public
12 findings of any that are found to be so[~~-. The state~~
13 ~~agency shall weigh the costs of the health care~~
14 ~~services or facilities against the benefits the~~
15 ~~services or facilities provide and there shall be a~~
16 ~~negative presumption against marginal services.~~];
17 (7) Provide technical assistance to persons, public or
18 private, in obtaining and filling out the necessary
19 forms for the development of projects and programs[-];
20 (8) Prepare reports, studies, and recommendations on
21 emerging health issues, such as medical ethics,
22 [~~health care rationing,~~] involuntary care, care for



1 the indigent, and standards for research and
2 development of biotechnology and genetic
3 engineering[-]; and

4 (9) Conduct such other activities as are necessary to meet
5 the purposes of this chapter."

6 SECTION 5. Section 323D-14, Hawaii Revised Statutes, is
7 amended to read as follows:

8 **"§323D-14 Functions; statewide health coordinating**
9 **council.** The statewide council shall:

10 (1) Prepare and revise as necessary the state health
11 services and facilities plan;

12 (2) Advise the state agency on actions under section 323D-
13 12;

14 [~~(3) Appoint the review panel pursuant to section 323D-42;~~
15 ~~and~~

16 ~~(4) Review and comment upon the following actions by the~~
17 ~~state agency before such actions are made final;~~

18 ~~(A) The making of findings as to applications for~~
19 ~~certificate of need; and~~

20 ~~(B) The making of findings as to the appropriateness~~
21 ~~of those institutional and noninstitutional~~

22 ~~health services offered in the State.] and~~



1 (3) Perform the initial review of certificate of need
2 applications, including making recommendations to the
3 state agency and the respective subarea council and
4 commenting upon the certificate of need application."

5 SECTION 6. 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] state shall submit
9 such statistical and other reports of information related to
10 health and health care as the state agency finds necessary to
11 the performance of its functions[~~. The information deemed~~
12 ~~necessary includes but is not limited to:~~

13 ~~(1) Information], including information~~ regarding changes
14 in the class of usage of the bed complement of a
15 health care facility under section 323D-54(9) [~~+~~

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

17 ~~(3) Projects that are wholly dedicated to meeting the~~
18 ~~State's obligations under court orders, including~~
19 ~~consent decrees, under section 323D-54(10);~~

20 ~~(4) Replacement of existing equipment with an updated~~
21 ~~equivalent under section 323D-54(11);~~



1 ~~(5) Primary care clinics under the expenditure thresholds~~
2 ~~under section 323D-54(12); and~~
3 ~~(6) Equipment and services related to that equipment, that~~
4 ~~are primarily intended for research purposes as~~
5 ~~opposed to usual and customary diagnostic and~~
6 ~~therapeutic care]."~~

7 SECTION 7. Section 323D-22, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows:

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

- 13 (1) Identify and recommend to the state agency and the
14 council the data needs and special concerns of the
15 respective subareas with respect to the preparation of
16 the state plan[-];
17 (2) Provide specific recommendations to the state agency
18 and the council regarding the highest priorities for
19 health services and resources development[-];
20 (3) Review the state health services and facilities plan
21 as it relates to the respective subareas and make



- 1 recommendations to the state agency [~~and the~~
2 ~~council.~~];
- 3 (4) Advise the state agency in the administration of the
4 certificate of need program for their respective
5 subareas[], including reviewing comments of the
6 statewide council and making a final recommendation to
7 the state agency administrator;
- 8 (5) Advise the state agency on the cost of reimbursable
9 expenses incurred in the performance of their
10 functions for inclusion in the state agency budget[];
- 11 (6) Advise the state agency in the performance of its
12 specific functions[];
- 13 (7) Perform other such functions as agreed upon by the
14 state agency and the respective subarea councils[];
15 and
- 16 (8) Each subarea health planning council shall recommend
17 for gubernatorial appointment at least one person from
18 its membership to be on the statewide council."

19 SECTION 8. Section 323D-43, Hawaii Revised Statutes, is
20 amended by amending subsection (a) to read as follows:

21 "(a) No person, public or private, nonprofit[] or for
22 profit, shall:



1 (1) Construct, expand, alter, convert, develop, initiate,
2 or modify [~~a health care facility~~] an emergency room,
3 freestanding emergency facility, or [~~health care~~
4 ~~services~~] surface ambulance service in the [~~State~~
5 state] that requires a total capital expenditure in
6 excess of [~~the expenditure minimums,~~] \$1,000,000; or

7 (2) Substantially modify or increase the scope or type of
8 [~~health service~~] an emergency room, freestanding
9 emergency care facility, or surface ambulance service
10 rendered[~~;~~ ~~or~~

11 ~~(3) Increase, decrease, or change the class of usage of~~
12 ~~the bed complement of a health care facility, or~~
13 ~~relocate beds from one physical facility or site to~~
14 ~~another],~~

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

17 SECTION 9. Section 323D-44, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:

19 "(a) An applicant for a certificate of need shall file an
20 application with the state agency. The state agency shall
21 provide technical assistance to the applicant in the preparation
22 and filing of the application.



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

6 The state agency shall not accept an application for review
7 until the application is complete and includes all necessary
8 information required by the state agency. The state agency
9 shall determine if the application is complete within thirty
10 days of receipt of the application. If the state agency
11 determines that the application is incomplete, the state agency
12 shall inform the applicant of the additional information that is
13 required to complete the application. When the state agency
14 determines that the application is complete, the period for
15 agency review described in subsection (b) shall begin, and the
16 state agency shall transmit the completed application to the
17 appropriate subarea councils, [~~the review panel,~~] the statewide
18 council, appropriate individuals, and appropriate public
19 agencies. The state agency may require the applicant to provide
20 copies of the application to the state agency, the appropriate
21 subarea councils, [~~the review panel,~~] the statewide council,
22 appropriate individuals, and appropriate public agencies. If,



1 during the period for agency review, the state agency requires
2 the applicant to submit information respecting the subject of
3 the review, the period for agency review shall, at the request
4 of the applicant, be extended fifteen days."

5 SECTION 10. Section 323D-44.5, Hawaii Revised Statutes, is
6 amended to read as follows:

7 **"§323D-44.5 Administrative review of certain applications**
8 **for certificate of need.** The state agency shall adopt rules in
9 conformity with chapter 91 providing for administrative review
10 and decision on certain applications for certificate of need.
11 Each application reviewed under this section may be subject to a
12 public information meeting before the state agency makes its
13 decision. The agency, in the State and in the county affected,
14 shall give public notice of applications for administrative
15 review received by the agency. Interested persons may request
16 in writing a public meeting before the agency renders a decision
17 on the administrative application. If a request for a public
18 meeting is received, the administrator will preside over the
19 meeting. If no request is received by the agency within seven
20 days of the public notice date, no public meeting need be
21 scheduled. Applications subject to administrative review and



1 decision under this section shall [~~include but are not limited~~
2 ~~to applications that are:~~

3 ~~(1) Inconsistent with or contrary to the state health~~
4 ~~services and facilities plan under section 323D-15;~~

5 ~~(2) Determined not to have a significant impact on the~~
6 ~~health care system; or~~

7 ~~(3) Involve capital or annual operating expenses below a~~
8 ~~significant level.]~~

9 be limited to those dealing with emergency room, freestanding
10 emergency care facilities, and surface ambulance services."

11 SECTION 11. Section 323D-44.6, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§323D-44.6 Review of certain applications for certificate**
14 **of need; waiver.** The [~~subarea~~] statewide council, [~~the review~~
15 ~~panel,~~] and the [~~statewide~~] subarea council may, at their
16 discretion, choose to waive their respective prerogatives of
17 review of any certificate of need application."

18 SECTION 12. Section 323D-45, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§323D-45 Subarea council** [~~, review panel,~~] **and statewide**
21 **council recommendations for issuance or denial of certificates**
22 **of need.** (a) Except for an administrative review as provided



1 in section 323D-44.5, or in an emergency situation or other
2 unusual circumstances as provided in section 323D-44(c), the
3 state agency shall refer every application for a certificate of
4 need to ~~[the appropriate subarea council or councils, the review~~
5 ~~panel, and]~~ the statewide council~~[-]~~ and the appropriate subarea
6 council. The ~~[subarea]~~ statewide council ~~[and the review panel]~~
7 shall consider all relevant data and information submitted by
8 the state agency, ~~[subarea councils,]~~ other areawide or local
9 bodies, and the applicant, and may request from them additional
10 data and information. ~~[The review panel shall consider each~~
11 ~~application at a public meeting and shall submit its~~
12 ~~recommendations with findings to the statewide council.]~~ The
13 ~~[statewide]~~ subarea council shall consider the recommendation of
14 the ~~[review panel]~~ statewide council at a public meeting and
15 shall submit its recommendations to the state agency within such
16 time as the state agency prescribes. The statewide council and
17 the ~~[review panel]~~ subarea council may join together to hear or
18 consider simultaneously information related to an application
19 for a certificate of need.

20 (b) At a public meeting in which a ~~[subarea]~~ statewide or
21 subarea council ~~[or the review panel]~~ considers an application
22 for a certificate of need, any person shall have the right to be



1 represented by counsel and to present oral or written arguments
2 and evidence relevant to the application; any person directly
3 affected by the application may conduct reasonable questioning
4 of persons who make factual allegations relevant to the
5 application; any staff member of the state agency may conduct
6 reasonable questioning of persons who make factual allegations
7 relevant to the application; and a record of the meeting shall
8 be kept."

9 SECTION 13. Section 323D-47, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§323D-47 Request for reconsideration.** (a) The state
12 agency may provide by rules adopted in conformity with chapter
13 91 for a procedure by which any person may, for good cause
14 shown, request in writing a public hearing before a
15 reconsideration committee for purposes of reconsideration of the
16 agency's decision. The reconsideration committee shall consist
17 of the administrator of the state agency [~~and the chairpersons~~],
18 chairperson of the statewide council, [~~the review panel, the~~
19 ~~plan development committee of the statewide council,~~] and the
20 chair and vice chairs of the appropriate subarea health planning
21 council. The administrator shall be the chairperson of the
22 reconsideration committee. A request for a public hearing shall



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

- 3 (1) It presents significant, relevant information not
4 previously considered by the state agency;
- 5 (2) It demonstrates that there have been significant
6 changes in factors or circumstances relied upon by the
7 state agency in reaching its decision;
- 8 (3) It demonstrates that the state agency has materially
9 failed to follow its adopted procedures in reaching
10 its decision;
- 11 (4) It provides such other bases for a public hearing as
12 the state agency determines constitutes good causes;

13 or

- 14 (5) The decision of the administrator differs from the
15 recommendation of the [~~statewide~~] subarea council.

16 (b) To be effective, a request for such a hearing shall be
17 received within [~~ten working~~] thirty calendar days of the state
18 agency decision. A decision of the reconsideration committee
19 following a public hearing under this section shall be
20 considered a decision of the state agency for purposes of
21 section 323D-44.



1 (c) The public hearing on a request for reconsideration
2 shall be held on the island where the facility is to be built or
3 the service is to be rendered."

4 SECTION 14. Section 323D-49, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§323D-49 Certificates of need; licenses and permits.** (a)

7 ~~[No] Where a certificate of need is required pursuant to section~~
8 ~~323D-43, 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]~~ an emergency room, freestanding emergency
14 care facility, or surface ambulance service unless there is
15 submitted in connection with the application for such permit or
16 license, a current certificate of need issued by the state
17 agency ~~[or a statement issued by the state agency that the~~
18 ~~health care facility or health care service is not required to~~
19 ~~hold a certificate of need under this part].~~~~

20 (b) ~~[No] When a certificate of need is required under this~~
21 ~~chapter, no building permit shall be issued by any county or~~
22 ~~state officer for the development, construction, expansion,~~



1 alteration, conversion, initiation, or modification of [~~an~~
2 ~~existing hospital unless there is submitted in connection with~~
3 ~~the application for such building permit a current certificate~~
4 ~~of need issued by the state agency or a statement issued by the~~
5 ~~state agency that the existing hospital is not required to hold~~
6 ~~a certificate of need under this part.] an emergency room,
7 freestanding emergency care facility, or surface ambulance
8 unit."~~

9 SECTION 15. Section 323D-50, Hawaii Revised Statutes, is
10 amended by amending subsection (b) to read as follows:

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



1 SECTION 16. Section 323D-42, Hawaii Revised Statutes, is
2 repealed.

3 [~~"§323D-42 Review panel. There is established a review~~
4 ~~panel for the purposes of reviewing applications for~~
5 ~~certificates of need. The review panel shall be appointed by~~
6 ~~the statewide council. The review panel shall include at least~~
7 ~~one member from each county and a majority of the members shall~~
8 ~~be consumers. Membership on the statewide council shall not~~
9 ~~preclude membership on the review panel established in this~~
10 ~~section."]~~

11 SECTION 17. Section 323D-54, Hawaii Revised Statutes, is
12 repealed.

13 [~~"§323D-54 Exemptions from certificate of need~~
14 ~~requirements. Nothing in this part or rules with respect to the~~
15 ~~requirement for certificates of need applies to:~~

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



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



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



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

11 ~~(15) Extended care adult residential care homes and~~
12 ~~assisted living facilities; or~~
13 ~~(16) Other facilities or services that the agency through~~
14 ~~the statewide council chooses to exempt, by rules~~
15 ~~pursuant to section 323D-62."]~~

16 SECTION 18. Part VII of chapter 323D, Hawaii Revised
17 Statutes, is repealed.

18 SECTION 19. (a) There shall be established a twelve-
19 member certificate of need study blue ribbon panel. The members
20 shall include the director of health and eleven members of the
21 public. The public members shall be appointed as follows:

- 1 (1) Three persons shall be appointed by the president of
2 the senate, of whom:
- 3 (A) One shall be a licensed health care professional;
4 (B) One shall be a representative of a licensed
5 health care facility; and
6 (C) One shall have knowledge about health care
7 financing;
- 8 (2) Three persons shall be appointed by the speaker of the
9 house of representatives, of whom:
- 10 (A) One shall be a licensed health care professional;
11 (B) One shall be a representative of a licensed
12 health care facility; and
13 (C) One shall have knowledge about health care
14 financing;
- 15 and
- 16 (3) Five persons shall be appointed by the governor, of
17 whom:
- 18 (A) One shall be a licensed health care professional;
19 (B) One shall be a representative of a licensed
20 health care facility; and
21 (C) Three shall have knowledge about health care
22 financing.



1 Vacancies in the membership of the panel shall be filled in the
2 same manner provided for the original appointments.

3 (b) The membership of the panel shall vote to elect a
4 chairperson.

5 (c) The panel shall be entitled to request assistance and
6 information from the employees of any state, county, or
7 municipal department, board, bureau, commission, or agency as
8 may be required for its purposes. The department of health
9 shall provide staff support for the panel.

10 (d) The panel shall conduct a comprehensive study to
11 examine:

12 (1) Certificate of need processes in other states that
13 have been modified or eliminated, and the effects of
14 the modifications or elimination;

15 (2) What other states are doing to reform the certificate
16 of need process; and

17 (3) The impact that modification or elimination of the
18 certificate of need process may have on the state with
19 regard to:

20 (A) Access to care by residents;

21 (B) Quality of care;



1 (C) Services that are delivered statewide or on a
2 regional basis; and

3 (D) Funding, including programs such as medicaid.

4 (e) The panel shall submit a report to the legislature no
5 later than twenty days prior to the convening of the regular
6 session of 2008. The report shall include recommendations,
7 including suggested legislation, if any, on:

8 (1) The panel's findings with regard to other state's
9 experiences with the certificate of need process;

10 (2) The future of Hawaii's certificate of need process;

11 (3) Which health care services or facilities, if any,
12 should continue to be subject to the certificate of
13 need requirements or other state regulation; and

14 (4) Which services or facilities should be exempt from
15 state regulation.

16 SECTION 20. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 21. This Act shall take effect on July 1, 2009;
19 provided that section 19 shall take effect upon its approval.



Report Title:

Certificate of Need; Restructuring; Blue Ribbon Panel

Description:

Overhauls the certificate of need (CON) process by, among other things: (1) Redefining and narrowing the scope of CON requirements so that they are only required for emergency rooms, freestanding emergency care facilities, and surface ambulance services; (2) Eliminating the CON Review Panel to streamline the CON process; and (3) Establishing a temporary blue ribbon panel to conduct a comprehensive study to examine the CON process in other states and submit a report containing its recommendations. (HB1067 HD2)

