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## A BILL FOR AN ACT

RELATING TO CERTIFICATES OF NEED.

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

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12 Planning and Resources Development Act were repealed and since  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



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

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



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

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

5 The legislature believes that national health care reform  
6 and other changes taking place in the health care marketplace  
7 make it appropriate to examine the relevance of Hawaii's  
8 certificate of need program and its effects on health care  
9 access, quality, and costs.

10 The purpose of this Act is to repeal Hawaii's certificate  
11 of need requirement for all health care facilities and services  
12 except nursing homes, hospices, intermediate care facilities for  
13 the intellectually disabled, and ambulance service providers.

14 SECTION 2. Section 323D-2, Hawaii Revised Statutes, is  
15 amended by amending the definitions of "health care facility"  
16 and "health care service" and "state health services and  
17 facilities plan" to read as follows:

18 "Health care facility" and "health care service" include  
19 any ~~[program, institution, place, building, or agency, or~~  
20 ~~portion thereof, private or public, other than federal~~  
21 ~~facilities or services, whether organized for profit or not,~~



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

19 "State health services and facilities plan" means the  
20 comprehensive plan for the economical delivery of health care  
21 services in the State prepared by the statewide council."



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

3       "(a) The state agency shall:

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

18       (2) Serve as staff to and provide technical assistance and  
19 advice to the statewide council and the subarea  
20 councils in the preparation, review, and revision of  
21 the state health services and facilities plan;



- 1           (3) Conduct the health planning activities of the State in  
2           coordination with the subarea councils, implement the  
3           state health services and facilities plan, and  
4           determine the statewide health needs of the State  
5           after consulting with the statewide council; and  
6           (4) Administer the state certificate of need program  
7           pursuant to part V."

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

10           "**§323D-15 State health services and facilities plan.**

11 There shall be a state health services and facilities plan which  
12 shall address the health care facility and service needs of the  
13 State[, ~~including inpatient care, health care facilities, and~~  
14 ~~special needs~~]. The plan shall depict the most economical and  
15 efficient system of care commensurate with adequate quality of  
16 care, and shall include standards for utilization of health care  
17 facilities and major medical equipment. The plan shall provide  
18 for the reduction or elimination of underutilized, redundant, or  
19 inappropriate health care facilities and health care services."

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



1       "**§323D-18 Information required of providers.** [~~Providers~~  
2 ~~of health~~] Health care facilities doing business in the State  
3 shall submit [~~such~~] statistical and other reports of information  
4 related to health and health care [~~as~~] that the state agency  
5 finds necessary to the performance of its functions. The  
6 information deemed necessary includes but is not limited to:

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

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

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

14       (4) Replacement of existing equipment with an updated  
15       equivalent under section 323D-54(11);

16       (5) Primary care clinics under the expenditure thresholds  
17       under section 323D-54(12); and

18       (6) Equipment and services related to that equipment, that  
19       are primarily intended for research purposes as  
20       opposed to usual and customary diagnostic and  
21       therapeutic care."



1       SECTION 6. Section 323D-22, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3       "(a) Each subarea health planning council shall review,  
4 seek public input, and make recommendations relating to [health]  
5 the planning of health care facilities and health care services  
6 for the geographical subarea it serves. In addition, the  
7 subarea health planning councils shall:

8       (1) Identify and recommend to the state agency and the  
9 council the data needs and special concerns of the  
10 respective subareas with respect to the preparation of  
11 the state plan[-];

12       (2) Provide specific recommendations to the state agency  
13 and the council regarding the highest priorities for  
14 health care services and resources development[-];

15       (3) Review the state health services and facilities plan  
16 as it relates to the respective subareas and make  
17 recommendations to the state agency and the  
18 council[-];

19       (4) Advise the state agency in the administration of the  
20 certificate of need program for their respective  
21 subareas[-];





- 1 (5) Advise the state agency on the cost of reimbursable  
2 expenses incurred in the performance of their  
3 functions for inclusion in the state agency budget[-];  
4 (6) Advise the state agency in the performance of its  
5 specific functions[-];  
6 (7) Perform other [~~such~~] functions as agreed upon by the  
7 state agency and the respective subarea councils[-];  
8 and  
9 (8) Each [~~subarea health planning council shall~~] recommend  
10 for gubernatorial appointment at least one person from  
11 its membership to be on the statewide council."

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

14 **"§323D-49 Certificates of need; licenses and permits.**

15 [~~(a)~~] No permit or license shall be issued by any county or  
16 state officer for the development, construction, expansion,  
17 alteration, conversion, initiation, or modification of a health  
18 care facility or health care service[~~, other than an existing~~  
19 ~~hospital,~~] or for the operation of a new health care facility or  
20 health care service unless there is submitted in connection with  
21 the application for such permit or license a current certificate



1 of need issued by the state agency or a statement issued by the  
2 state agency that the health care facility or health care  
3 service is not required to hold a certificate of need under this  
4 part.

5 ~~[(b) No building permit shall be issued by any county or~~  
6 ~~state officer for the development, construction, expansion,~~  
7 ~~alteration, conversion, initiation, or modification of an~~  
8 ~~existing hospital unless there is submitted in connection with~~  
9 ~~the application for such building permit a current certificate~~  
10 ~~of need issued by the state agency or a statement issued by the~~  
11 ~~state agency that the existing hospital is not required to hold~~  
12 ~~a certificate of need under this part.] "~~

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

15 "(b) Any license to operate a health care facility may be  
16 revoked or suspended by the department of health at any time in  
17 a proceeding before the department for any person proceeding  
18 with an action covered under section 323D-43 without a  
19 certificate of need. If any such license is revoked or  
20 suspended by the department, the holder of the license shall be  
21 notified in writing by the department of the revocation or



1 suspension. Any license to operate a health care facility that  
2 has been revoked under this section shall not be restored except  
3 by action of the department."

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

6 "**§323D-53 Periodic reports from health care facilities.**

7 Any health care facility [~~or business~~] subject to regulation  
8 under this part shall, at the request of the state agency,  
9 supply [~~such~~] information to the state agency [~~as~~] that is  
10 necessary to carry out the purposes of this chapter, including  
11 but not limited to:

- 12 (1) Periodic reports from holders of certificates of need  
13 respecting the development of the proposals for which  
14 certificates have been issued,  
15 (2) Master plans, feasibility studies, and other  
16 long-range plans and studies,  
17 (3) Financial information, and  
18 (4) Utilization information."

19 SECTION 10. Section 325-20, Hawaii Revised Statutes, is  
20 amended by amending subsection (b) to read as follows:



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

3       "Dangerous disease" means any illness or health condition  
4 that might pose a substantial risk of a significant number of  
5 human fatalities or incidents of permanent or long-term  
6 disability.

7       "Department" means the department of health.

8       "Director" means the director of health.

9       "Epidemic" means the occurrence of cases of an illness  
10 clearly in excess of normal expectancy, as determined by the  
11 director.

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

14       ~~"Health care provider" means a provider as defined in~~  
15 ~~section 323D-2.]~~ and "health care provider" include any program,  
16 institution, place, building, or agency, or portion thereof,  
17 private or public, other than federal facilities or services,  
18 whether organized for profit or not, used, operated, or designed  
19 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



1 facilities and health care services commonly referred to as  
2 hospitals, facilities that provide inpatient medical care and  
3 other related services for surgery or acute medical conditions  
4 or injuries (usually for a short-term illness or condition),  
5 extended care and rehabilitation centers, nursing homes, skilled  
6 nursing facilities, intermediate care facilities, hospices for  
7 the terminally ill that require licensure or certification by  
8 the department of health, kidney disease treatment centers  
9 including freestanding hemodialysis units, outpatient clinics,  
10 organized ambulatory health care facilities, emergency care  
11 facilities and centers, home health agencies, health maintenance  
12 organizations, and others providing similarly organized services  
13 regardless of nomenclature."

14 SECTION 11. Sections 325-2.5(h), 325-16(h), 325-101,  
15 327L-1, 431:13-108(1), 453-3, 461-1, 489-2, 622-58(d), 671-1,  
16 and 707-711(1)(j), Hawaii Revised Statutes, are amended by  
17 substituting the text "325-20(b)" wherever the text "323D-2"  
18 appears, as the context requires.

19 SECTION 12. No later than January 1, 2023, the state  
20 health planning and development agency shall:



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

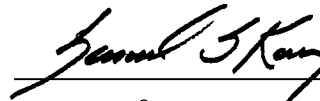
(2) Make the proposed state health services and facilities plan available in the same manner as proposed rules pursuant to section 91-2.6, Hawaii Revised Statutes.

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

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

SECTION 15. This Act shall take effect upon its approval.

INTRODUCED BY:



JAN 25 2022



# H.B. NO. 2205

**Report Title:**

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

**Description:**

Eliminates the certificate of need requirement for all health care facilities and health care services except for nursing homes, hospices, intermediate care facilities for the intellectually disabled, and ambulance service providers.

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

