

## ACT 209

S.B. NO. 1658-74

A Bill for an Act Relating to Comprehensive Health Planning.

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

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

**“PART III.**

**PLANNING FOR HEALTH CARE FACILITIES AND SERVICES**

**Sec. 323-31 Purpose.** The purpose of this part is to establish the means and procedures for mandatory planning for health care facilities and services in the State, thereby providing for the development of hospitals and certain other health care facilities of a desirable and practicable size, location, and commitment to health care needs of the State and of the several communities in the State, by:

- (1) Providing that the construction, expansion, alteration, or conversion of certain health care facilities and the initiation, expansion, or modification of certain health care services, including acquisition of equipment, will be made in an orderly and economical manner consistent with proper and effective development of such facilities and services to meet the health care needs of the people of the State;

- (2) Instituting procedures for health care providers to apply for and obtain certificates of need as a condition precedent to undertaking construction, expansion, alteration, or conversion of certain health care facilities or initiation, expansion, or modification of certain health care services, including acquisition of equipment, and providing for enforcement, including penalties, of the required certificates of need; and
- (3) Establishing public bodies for the administration of this part.

**Sec. 323-32 Definitions.** As used in this part:

- (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 323-38, 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, or
  - (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, personal care homes, homes for the aged and infirm, intermediate care facilities, outpatient 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 advisory council 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) 'State advisory council' means the State advisory council for comprehensive health planning which is appointed by the governor to

serve in an advisory capacity for the purposes of Public Law 89-749 and which is the designated planning agency for purposes of Public Law 92-603, section 221, or Acts of Congress successor of or amendatory of or supplementary to said public laws, as provided in section 323-34.

- (7) 'State comprehensive health planning agency' means the State agency for comprehensive health planning for purposes of this part and Public Law 89-749 and Public Law 92-603, section 221, or Acts of Congress successor thereof or amendatory thereof or supplementary thereto, as established in section 323-33.
- (8) '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. 323-33 State Comprehensive Health Planning Agency, Chief Administrator, Staff, etc.** There is established within the department of health for administrative purposes only the State comprehensive health planning agency. The governor shall appoint the chief administrator of the State comprehensive health planning agency who shall be subject to chapters 76, 77, and 78. The chief administrator shall appoint necessary staff, subject to the approval of the State advisory council, who shall be subject to chapters 76, 77, and 78. The State comprehensive health planning agency shall administer State health planning activities under this part and in the implementation of planning responsibilities pursuant to Public Law 89-749 and Public Law 92-603, section 221, or Acts of Congress successor thereof or amendatory thereof or supplementary thereto.

**Sec. 323-34 State Advisory Council for Comprehensive Health Planning.** There is established within the State comprehensive health planning agency the State advisory council for comprehensive health planning which shall serve in an advisory capacity on matters of comprehensive health planning, including Public Law 89-749, to the governor, the State comprehensive health planning agency, and the department of health and which shall be responsible as the designated planning agency pursuant to Public Law 92-603, section 221, or Acts of Congress successor of or amendatory of or supplementary to said public laws, and which shall be responsible for prescribed duties under this part, including determinations on the issuance, approval, or denial of certificates of need.

The State advisory council shall consist of not fewer than thirty-eight nor more than forty-five members who shall be appointed by the governor as provided in section 26-34. The membership shall include, ex-officio without voting rights, the director of social services and housing, the director of labor and industrial relations, the director of transportation, the superintendent of education, the administrator in the State of the veterans administration, and the executive director of the regional medical program of Hawaii, or their respective representatives. The remaining members shall be selected on the basis of their interests and knowledge in, and their ability to make

contributions to, matters relating to comprehensive health planning and shall include at least one member from each county. A majority of the members shall be consumers of health care none of whose major occupation is the provision, administration, or financing of any type of health care or teaching or research in health and none of whom has or had a major financial interest in any health activity; provided that a spouse, parent, child, or sibling of a person who does not qualify as a consumer of health care shall not be considered a consumer of health care. The chairman shall be appointed by the governor from the appointive members of the State advisory council. The State advisory council shall meet at least four times each year at times and places agreed upon by the members.

**Sec. 323-35 Review Panel.** A review panel shall be appointed and established by the State advisory council for the purpose of studying and investigating proposals for capital expenditures by health care facilities that are subject to Public Law 92-603, section 221, and applications for certificates of need under this part. The review panel shall submit its recommendation, with findings, to the State advisory council for each proposal and application submitted to the review panel by the State comprehensive health planning agency, including proposals and applications submitted to the review panel for recommendations on the question of whether or not a proposal or application is subject to Public Law 92-603, section 221, or to the certificate of need requirements of this part.

The membership of the review panel shall include at least one member from each county and shall include a majority of members who are consumers of health care none of whose major occupation is the provision, administration, or financing of any type of health care or teaching or research in health and none of whom has or had a major financial interest in any health activity; provided that a spouse, parent, child, or sibling of a person who does not qualify as a consumer of health care shall not be considered a consumer of health care. The members shall be selected by the State advisory council on the basis of expert knowledge and not as representative of particular interest groups.

**Sec. 323-36 State Assisted Area Wide Health Planning Councils.** State assisted area wide health planning councils may be established within defined geographical areas of the State by the State Advisory council. Membership on the State assisted area wide planning councils shall be limited to residents of the respective geographical areas. The State assisted area wide planning councils shall be subject to such requirements and rules as are prescribed by the State advisory council and applicable federal laws and rules and regulations. The State assisted area wide health planning councils shall advise the department of health, the State comprehensive health planning agency, the State advisory council for comprehensive health planning, and the review panel with respect to their respective area health needs as related to comprehensive health planning; implementation of Public Law 89-749 and Public Law 92-603, section 221, or Acts of Congress successor thereof or amendatory thereof or supplementary thereto; and the determinations on the issuance, approval, or denial of certificates of need under this part.

**Sec. 323-37 Powers and Duties of State Comprehensive Health Planning Agency; Information from Certain Regulated Health facilities, etc. (a)**

The State comprehensive health planning agency, with the advice and approval of the State advisory council shall:

- (1) Develop a comprehensive State plan designed to meet the quantitative and qualitative health care needs of the people of the State. The State plan shall take into consideration geographic and socio-economic factors as they prevail in the several geographical areas of the State.
  - (2) Review the State plan from time to time but not less frequently than annually, and make annual reports to the governor and make such reports and maintain such records as the secretary of health, education and welfare requires for the purposes of Public Law 89-749 and Public Law 92-603, section 221, or Acts of Congress successor thereof or amendatory thereof or supplementary thereto.
  - (3) Establish criteria for determining the need for the construction, expansion, alteration, conversion, initiation, or modification of health care facilities and health care services throughout the State and in the several geographical areas of the State.
  - (4) Promulgate rules and regulations, in conformity with chapter 91, to carry out the purposes of this part.
- (b) Any facility or business subject to regulation under section 321-11(10) or 321-11(12) shall, at the request of the State comprehensive health planning agency following reasonable notice, supply such information to the State comprehensive health planning agency as is necessary to carry out the purposes of subsection (a).

**Sec. 323-38 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 advisory council.
- (b) No certificate of need shall be issued unless the State advisory council 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 date of issuance unless the period is extended for good cause by the State advisory council.

(c) The State advisory council shall, after consultation with the State comprehensive health planning agency 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 advisory council in its determinations on certificates of need, including, but not limited to criteria related to:

- (1) Health care needs,
- (2) The comprehensive State plan prescribed in section 323-37(1) and other State plans,
- (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 comprehensive health planning agency as required in section 323-37(b).

**Sec. 323-39 Applications for Certificates of Need.** (a) An applicant for a certificate of need shall file an application with the State comprehensive health planning 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 advisory council shall either approve or deny an application within ninety days after filing unless, within sixty days after filing, the State advisory council notifies the applicant in writing that the period for considering the application has been extended. The State advisory council may extend the period within which a determination must 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 and fifty days after filing and completion of the application, the failure of the State advisory council to issue or deny the certificate of need is equivalent to approval of the application, and at the request of the applicant, the State advisory council shall issue the certificate of need.

(c) The State advisory council may provide by rules and regulations, promulgated in conformity with chapter 91, for the issuance of certificates of need upon the unanimous approval by the chairman of the State advisory council, the chairman of the review panel, the chairman of the applicable State assisted area wide health planning council, and the head of the hospital and medical facilities branch of the department of health, for those applications for which the procedures set forth in section 323-40 would be infeasible because of emergency or other unusual circumstances.

**Sec. 323-40 Review Panel Recommendations for Issuance or Denial of Certificates of Need.** Except as provided in section 323-39(c), the State advisory council 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 comprehensive health planning agency, the applicable State assisted area wide health planning council, and the head of the hospital and medical facilities branch of the department of health, 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 advisory council within such time as the State advisory council prescribes.

**Sec. 323-41 Denial of Applications; Judicial Review.** If an application for a certificate of need is denied, the State advisory council 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. 323-42 Certificates of Need, Licenses and Permits.** No permits or license 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 advisory council or a statement issued by the State advisory council that said health care facility or health care service is not required to hold a certificate of need under this part.

**Sec. 323-43 Certificates of need, penalties.** Any person who violates any provision of this part, or rules and regulations 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. 323-44 Exemptions from Certificate of need Requirements.** Nothing in this part or rules and regulations thereunder with respect to the requirement for certificates of need applies to:

- (1) Private offices or clinics of physicians, dentists, or other practitioners of the healing arts or laboratories, as defined for purposes of 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.

**Sec. 323-45 Compensation.** All members of the State advisory council, State assisted area wide health planning councils, and review panel shall serve without pay, but shall be entitled to reimbursement for necessary expenses

while attending meetings and while in the discharge of duties and responsibilities.

**Sec. 323-46 Severability.** If any provision of this part, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the part which can be given effect without the invalid provision or application, and to this end the provisions of this part are severable.”

SECTION 2. Chapter 323, Hawaii Revised Statutes, is amended in the following respects:

1. Section 323-12 is amended to read as follows:

**“Sec. 323-12 Definitions.** As used in this part:

- (1) ‘Department’ means the department of health of the State.
- (2) ‘The Federal Act’ means title VI of the Public Health Service Act (42 U.S.C. section 291 et seq.) with respect to hospitals and medical facilities and other facilities related to each, and the Mental Retardation Facilities and Community Mental Health Centers, Construction Act of 1963 (PL 88-164) with respect to facilities for the mentally retarded and community mental health centers, both as now and hereafter amended, or any other Act of Congress existing or hereafter enacted which relates to the planning, survey, and construction of hospitals and medical facilities and other facilities related to each; except Public Law 89-749 and Public Law 92-603, section 221, and Acts of Congress successor thereof or amendatory thereof or supplementary thereto.
- (3) ‘The surgeon general’ means the surgeon general of the United States public health service.
- (4) ‘Hospital’ includes public health centers and general, tuberculosis, mental, chronic disease, and other types of hospitals, and related facilities, such as laboratories, outpatient departments, nurses’ homes, and training facilities, and central service facilities operated in connection with hospitals, but does not include any hospital furnishing primarily domiciliary care.
- (5) ‘Public health center’ means a publicly owned facility for the provision of public health services, including related facilities such as laboratories, clinics, and administrative offices operated in connection with public health centers.
- (6) ‘Nonprofit hospital’ and ‘nonprofit medical facility’ mean any hospital or medical facility owned and operated by one or more nonprofit corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.
- (7) ‘Medical facilities’ means diagnostic or diagnostic and treatment centers, rehabilitation facilities, and nursing homes as those terms are defined in the Federal Act, and such other medical facilities for which federal aid may be authorized under the Federal Act.

(8) 'Fund' means the hospital and medical facilities fund established by this part."

2. Section 323-13 is amended to read as follows:

**"Sec. 323-13 Administration.** The department of health shall constitute the sole agency of the State for the purpose of:

- (1) Making an inventory of existing hospitals and medical facilities, surveying the need for construction of hospitals and medical facilities, and developing a program of construction as provided in this part; and
- (2) Developing and administering a State plan for the construction of public and other nonprofit hospitals and medical facilities as provided in this part; except as provided in part III."

3. Section 323-14 is amended to read as follows:

**"Sec. 323-14 Agency to Implement Federal Act.** The State department of health shall be the sole agency for implementing the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963 (Public Law 88-164) or any other Act of Congress hereafter enacted, other than Public Law 89-749 and Public Law 92-603, section 221 which relates to the planning, survey, and construction of hospitals and medical facilities and other facilities related to each. The responsibilities and procedures for compliance with Public Law 89-749 and Public Law 92-603, section 221, and Acts of Congress successor thereof or amendatory thereof or supplementary thereto shall be as set forth in part III."

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$81,000, or so much thereof as may be necessary, to be expended by the State comprehensive health planning agency for the purposes of this Act.

SECTION 4. In section 2, statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or underscoring.\*

SECTION 5. This Act shall take effect upon its approval; provided that applications for certificates of need, prescribed in section 323-38 under section 1 shall not be filed or acted upon until July 1, 1974 and thereafter.

(Approved June 12, 1974.)

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\*Edited accordingly.