

ACT 178

H.B. NO. 1694

A Bill for an Act Relating to Health Planning.

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

SECTION 1. Purpose. The legislature finds that a coordinated system of health planning which links together health services and facilities development will provide the State with the major vehicle for achieving equal access for every resident of the State to high quality health services at a reasonable cost. The legislature further finds that Public Law 93-641, the National Health Planning and Resources Development Act of 1974, will have a direct impact on health planning approaches and processes in the State. The impetus for the new health planning and resources development act was based on the federal government's assessment that there existed a need to strengthen and coordinate planning for personal health services and facilities development. Prior to the enactment of Public Law 93-641, health planning activities were funded under section 314(a)

and 314(b) of the Public Health Services Act. Such activities have been reported to be only marginally successful. Among the reasons given for the failure of the present comprehensive health planning activities and programs are inadequate statutes, inadequate funding, and inadequate authority to implement recommendations.

It is further indicated that the greatest contributor to the costs of medical services is the investment in costly health care resources such as facilities and equipment. There is evidence that overbuilding of facilities has occurred in many areas, whereas, some areas may still be experiencing a shortage of facilities, equipment and the attendant manpower.

A key factor for State consideration is the process of planning. The Legislature finds that health planning for the State is a complex area and requires the input of persons of various interests and representing various geographical areas. The planning process must seek to best meet the health needs of the State, as perceived by the residents of the State, who clearly, depending on the community of residence, perceive different needs.

It is the purpose of this Act to ensure the pragmatic health planning of the State by providing a permanent vehicle for citizen input into the health planning process so that the total health services plan of the State will be based on informed decision making. Under the concept of the new federal statute and the purpose of the legislature local input into health planning would be generated through the designation of subareas in which subarea health planning councils are established. Since the health care provider is one of the most important participants in the health care delivery system, the planning process must address the legitimate needs and concerns of the public and private providers if it is to achieve meaningful results. Therefore, the State should develop and use a variety of methods to ensure consumer and provider input. Thus, the State Health Plan would be an integration and coordination of local needs within State guidelines. In addition, accompanying the health plan will be a State Medical Facilities Plan which will establish facilities development priorities, and an annual implementation plan, both based on the State Health Plan.

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

SECTION 2. Chapter 323D, Hawaii Revised Statutes, is amended to read:

“CHAPTER 323D HEALTH PLANNING AND RESOURCES DEVELOPMENT

PART I. GENERAL PROVISIONS

Sec. 323D-1 Purpose. The purpose of this chapter is to establish a health planning and resources development program to assure the people of the State accessibility to quality health care through the development of health delivery systems.

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

- (1) "Annual implementation plan" means the annual program plan pursuant to section 323D-16.
- (2) "Secretary" means the secretary of the United States Department of Health, Education, and Welfare.
- (3) "State agency" means the state health planning and development agency established in section 323D-11.
- (4) "State health plan" means the comprehensive, coordinated plan for the development of health services in the State prepared by the statewide council.
- (5) "State medical facilities plan" means the comprehensive medical facilities plan pursuant to section 323D-31.
- (6) "Statewide council" means the statewide health coordinating council established in section 323D-13.
- (7) "Subarea" shall mean one of the geographic subareas designated by the state agency pursuant to section 323D-20.
- (8) "Subarea council" means a subarea health planning council established pursuant to section 323D-20.

PART II. STATE HEALTH PLANNING AND DEVELOPMENT PROGRAM

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

Sec. 323D-12 Functions; state agency. The state agency shall:

- (1) Conduct the health planning activities of the State in coordination with the subarea councils and implement the state health plan. If any recommendation of any subarea health planning council is not incorporated into the state health plan an explanation stating the reasons for non-incorporation shall be appended to that plan.
- (2) Prepare, review, and annually revise the preliminary state health plan pursuant to Public Law 93-641, section 1523(a)(2).
- (3) Prepare, review, and revise the annual implementation plan.
- (4) Assist the statewide council in reviewing the state medical facilities plan pursuant to section 323D-31.
- (5) Administer the state certificate of need program pursuant to part V of this chapter.
- (6) Determine the need for new institutional health services proposed to be offered within the state.
- (7) Review on a periodic basis all institutional health services offered in the State respecting the appropriateness of such activities.
- (8) 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 plan.

- (9) Adopt rules to require maintenance of financial responsibility equal to that required for participation in the patients' compensation fund as provided in section -36.
- (10) Do all things necessary as required by federal and state laws.

Sec. 323D-13 Statewide health coordinating council (a) There is established a statewide health coordinating council which shall be advisory to the state agency pursuant to Public Law 93-641, section 1524 and whose membership shall not exceed thirty members.

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

- (1) One representative from each subarea council established in accordance with the provisions of section 323D-20.
- (2) Not less than fifty-one per cent nor more than sixty per cent of the membership shall be consumers of health care.
- (3) Not less than one-third of the members who are providers of health care shall be direct providers of health care.
- (4) Public elected officials and other representatives of governmental authorities and representatives of public agencies concerned with health which is not more than one-third of the total membership.
- (5) Representatives of private agencies concerned with health.
- (6) A percentage of individuals who reside in non-metropolitan areas which is equal to the percentage of residents of the area who reside in nonmetropolitan areas.

In addition the total membership shall include representation as may be required by applicable federal law or implementing regulations.

(c) The statewide council shall select a chairman from among its members. The members of the statewide council shall not be compensated but shall be reimbursed for necessary expenses incurred in the performance of their duties.

Sec. 323D-14 Functions; statewide health coordinating council. The statewide council shall:

- (1) Prepare, review, and revise the state health plan.
- (2) Review applications for planning and medical facilities grants pursuant to sections 1516 and 1640, respectively, of Public Law 93-641, and submit a report of its comments to the secretary pursuant to section 1524(c)(4) of Public Law 93-641.
- (3) Advise the state agency on matters relating to its functions.
- (4) Approve the state medical facilities plan, prepared and administered by the state agency pursuant to section 1603 of Public Law 93-641.
- (5) Review annually and approve or disapprove any state plan and any application and any revision of a state plan or application submitted to the secretary of DHEW 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, or the Comprehensive

sive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 pursuant to the provisions of section 1524(c)(6) of Public Law 93-641.

- (6) Appoint the review panel pursuant to section 323D-42.
- (7) 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 fund pursuant to section 1640 of Public Law 93-641.
 - (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 existing institutional health services being offered in the State, pursuant to section 1523(a)(6) of Public Law 93-641.
 - (F) The approval or disapproval of each proposed use of federal funds within the State, pursuant to section 1513(c) of Public Law 93-641.

Sec. 323D-15 State health plan. There shall be a state health plan which shall include the special needs of the geographic subareas within the State to provide a comprehensive and coordinated statewide health care system.

Sec. 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.

Sec. 323D-17 Public hearings required. In the preparation of the state health plan or any amendments of such plans, the state agency and the statewide council, shall conduct a public hearing on such proposed plans and shall comply with chapter 91, Public Law 93-641, and regulations established by the secretary.

Sec. 323D-18 Information required of providers. Providers of health care doing business in the State shall submit such statistical and other reports of information related to health and health care as the state agency finds necessary to the performance of its functions.

PART III. SUBAREA HEALTH PLANNING COUNCILS

Sec. 323D-20 Subarea health planning councils, established. There are established subarea health planning councils for geographical areas which shall be designated by the state agency in consultation with the statewide council. Each county shall have at least one subarea health planning council. The subarea health planning councils shall be placed within the state agency for administrative purposes.

Sec. 323D-21 Subarea health planning councils, functions. Each subarea health planning council shall review, seek public input, and make recommendations relating to health planning for the geographical subarea it serves. In addition, the subarea health planning councils shall:

- (1) Identify and recommend to the state agency and the council the data needs and special concerns of the respective subareas with respect to the preparation of the state plan.
- (2) Provide specific recommendations to the state agency and the council regarding the highest priorities for health services and resources development.
- (3) Review the state health plan, the medical facilities plan and the annual implementation plan as they relate to the respective subareas and make recommendations to the state agency and the council.
- (4) Advise the state agency in the administration of the certificate of need program for their respective subareas.
- (5) Advise the state agency and the statewide council in the administration of the program to review applications for federal funds pursuant to section 323D-14(5).
- (6) Advise the state agency on the cost of reimbursable expenses incurred in the performance of their functions for inclusion in the state agency budget.
- (7) Advise the state agency in the performance of its specific functions.
- (8) Perform other such functions as agreed upon by the state agency and the respective subarea councils.
- (9) Each respective subarea health planning council shall recommend for gubernatorial appointment one person from its membership to be on the statewide council.

Sec. 323D-22 Subarea health planning councils, composition, appointment. Each subarea health planning council shall be constituted in a manner consistent with section 1512(c) of Public Law 93-641, and laws successor thereto or amendatory thereof. Members of subarea health planning councils shall be appointed by the governor, subject to section 26-34. Nominations for appointment shall be solicited from health-related and other interested organizations, and agencies, including health planning councils, providers of health care within the appropriate subarea, and other interested persons. The members of the subarea health planning councils shall not be compensated for their services but shall be reimbursed for reasonable expenses necessary to the performance of their function.

PART IV. STATE MEDICAL FACILITIES

Sec. 323D-31 State medical facilities plan. The state agency shall prepare and administer a state medical facilities plan which shall be approved by the statewide council and be submitted to the secretary for approval pursuant to section 1603 of Public Law 93-641 and any regulations adopted thereunder. In addition, the state agency shall perform all duties and responsibilities required under Title XVI of Public Law 93-641.

Sec. 323D-32 Public hearings required. In the preparation of the state medical facilities plan, the statewide council shall conduct public hearings on the proposed plan and shall adopt the plan under chapter 91.

Sec. 323D-33 Conformance with state health plan. The state medical facilities plan shall be consistent with the state health plan.

PART V. CERTIFICATE OF NEED

Sec. 323D-41 Definitions. In addition to the definitions in section 323D-2:

- (1) "Applicant" means any person, as defined in section 1-19, who applies for a certificate of need under this part.
- (2) "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 the purposes set forth in section 323D-41(4)[†] and includes the values of facilities and equipment obtained under donation or lease or comparable arrangements as though such items had been acquired by purchase.
- (3) "Certificate of need" means an authorization, when required pursuant to section 323D-43, to construct, expand, alter, or convert health care facility or to initiate, expand, develop, or modify a health care service.
- (4) "Construct", "expand", "alter", "convert", "develop", "initiate", or "modify" includes the erection, building, reconstruction, modernization, improvement, purchase 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; 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 \$150,000,
 - (B) Substantially modify, decrease, or increase the scope or type of health service rendered, or
 - (C) Increase, decrease, or change the class of usage of the bed complement of a health care facility.
- (5) "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

[†]"323D-41(4)" substituted for "323-41(4)" to correct manifest error.

facilities, intermediate care facilities, 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.

- (6) "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 agency may adopt rules to establish further criteria for differentiating between the private practice of medicine and organized ambulatory health care facilities.
- (7) "Review panel" means the panel established pursuant to section 323D-42.
- (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. 323D-42 Review panel. There is established a review panel for the purposes of reviewing applications for certificates of need. The review panel shall be appointed by the statewide council. The review panel shall include at least one member from each county and a majority of the members shall be consumers. Membership on the statewide council shall not preclude membership on the review panel established in this section.

Sec. 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 requires a total capital expenditure in excess of \$150,000; 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, 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 is a public need for the facility or the service. Each certificate of need issued shall be valid for a period of one year from the date of issuance unless the period is extended for good cause by the state agency.

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

- (1) The health care needs of the population to be served,
- (2) The relationship of the proposal to the state health plan prescribed in section 323D-15, the annual implementation plan described in section 323D-16, and the state medical facilities plan pursuant to section 323D-31,
- (3) The relationship of the proposal to the long-range development plan of the proponent,
- (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, as well as the probable impact of the proposal on the costs of and charges for providing health services by the proponent,
- (9) The availability of resources, including manpower and funds for capital and operating needs, for the provision of the services proposed to be provided and the availability of alternative uses of such resources for the provision of other health services,
- (10) The relationship of the services proposed to ancillary or support services,
- (11) The special needs and circumstances of those entities which provide a substantial portion of their services to people who live outside the state,
- (12) The special needs and circumstances of health maintenance organizations,
- (13) 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,
- (14) 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 proponent,
- (15) The availability of evaluation mechanisms, for supplying information to the health planning agency as required in section 323D-52.

(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.

Sec. 323D-44 Applications for certificates of need. (a) An applicant for a certificate of need shall file an application with the state agency which shall provide technical assistance to the applicant and, after all necessary information has been supplied by the applicant in the required number of copies, the state agency shall transmit the application to the appropriate subarea councils, individuals and public agencies.

(b) The state agency shall either approve or deny an application within ninety days after filing unless, within sixty days after filing, the state agency notifies the applicant in writing that the period for considering the application has been extended. The state agency may extend the period within which a determination shall be made on an application, if necessary for obtaining additional information about the application. If a certificate of need has not been issued or denied in writing within one hundred fifty days after filing and completion of the application, the proposal shall be deemed to have been found not to be needed and the state agency shall deny the certificate of need, provided that, if the state agency proposes not to issue the certificate of need, notice of such inaction and the reasons therefor, shall be given in writing to the review panel, the appropriate subarea councils, and the statewide council seven days prior to the expiration of the one hundred fifty day period.

(c) The state agency may provide by rules adopted in conformity with chapter 91, for the issuance of certificates of need for those applications for which the procedures set forth in section 323D-45 would be infeasible because of emergency or other unusual circumstances.

Sec. 323D-45 Review panel recommendations for issuance or denial of certificates of need. Except as provided in section 323D-44(c) the state agency shall refer every application for a certificate of need to the review panel. The review panel in studying each application shall consider all relevant data and information submitted by the state agency, subarea councils and other areawide or local bodies and may request from them and from the applicant additional data and information. The review panel shall consider each application at a public meeting and submit its recommendations with findings to the statewide council which shall submit its recommendations to the state agency within such time as the state agency prescribes.

Sec. 323D-46 Conditional certification. The state agency may provide by rules adopted in conformity with chapter 91 for the conditional certification of those proposals which, by modification of specific items of the proposal, would successfully meet the criteria for approval. The state agency shall require a statement from the applicant certifying that the required changes have been made before a certificate of need is issued.

Sec. 323D-47 Request for reconsideration. The state agency may provide by rules adopted in conformity with chapter 91 for a procedure by which any person may, for good cause shown, request in writing a public hearing for

purposes of reconsideration of the agency's decision. A request for a public hearing shall be deemed by the agency to have shown good cause, if it:

- (1) Presents significant, relevant information not previously considered by the state agency,
- (2) Demonstrates that there have been significant changes in factors or circumstances relied upon by the state agency in reaching its decision,
- (3) Demonstrates that the state agency has materially failed to follow its adopted procedures in reaching its decision, or
- (4) Provides such other bases for a public hearing as the state agency determines constitutes good causes. To be effective a request for such a hearing shall be received within thirty days of the state agency decision. A decision of the state agency following a public hearing under this section shall be considered a decision of the state agency for purposes of section 323D-44.

Sec. 323D-48 Denial of applications; judicial review. If an application for a certificate of need is denied, the state agency shall give notice to the applicant in writing stating the grounds for the denial. An applicant who considers himself aggrieved by the denial may appeal in the manner provided in chapter 91 to the circuit court of the circuit in which he resides or in the circuit in which the health care facility or health care service is or was planned to be located.

Sec. 323D-49 Certificates of need, licenses and permits. No permit or license shall be issued by any county or state officer for the development, construction, expansion, alteration, conversion, initiation, or modification of a health care facility or health care service or for the operation of a new health care facility or health care service unless there is submitted in connection with the application for such permit or license a current certificate of need issued by the state agency or a statement issued by the state agency that the health care facility or health care service is not required to hold a certificate of need under this part.

Sec. 323D-50 Certificates of need, penalties. (a) Any person who violates any provision of this part, or rules thereunder, with respect to the requirement for certificate 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.

(b) Any license to operate a health facility may be revoked or suspended by the department of health at any time in a proceeding before the department for any person proceeding with an action covered under section 323D-43 without a certificate of need. If any such license is revoked or suspended by the department, the holder of the license shall be notified in writing by the department of the revocation or suspension. Any license to operate a health facility which has been revoked under this section shall not be restored except by action of the department.

Sec. 323D-51 Injunctive relief. The state agency may, in the name of the people of the state through the attorney general of the state apply for an injunction in any court of competent jurisdiction to enjoin any person that has not received a certificate of need; and, upon the filing of a verified petition in the court, the court or any judge thereof, if satisfied by affidavit or otherwise, that

person is or has been proceeding with an action covered under section 323D-43 without a certificate of need, may issue a temporary injunction, without notice or bond, enjoining the defendant from further action. A copy of the verified complaint shall be served upon the defendant and the proceedings shall thereafter be conducted as in other civil cases. If it is established that the defendant has been or is proceeding with an action covered under section 323D-43 without a certificate of need, the court or any judge thereof may enter a decree enjoining the defendant from further action. In case of violation of any injunction issued under this section, the court may summarily try and punish the offender for contempt of court. The injunction proceeding shall be in addition to, and not in lieu of, all penalties and other remedies provided in this chapter.

Sec. 323D-52 Letters of intent. Persons proposing construction projects shall submit to the state agency letters of intent in such detail as may be necessary to inform the agency of the scope and nature of the projects at the earliest possible opportunity in the course of planning of such construction projects.

Sec. 323D-53 Periodic reports from health facilities. Any health facility or business subject to regulation under this part shall, at the request of the state agency, supply such information to the state agency as is necessary to carry out the purpose of this chapter, including but not limited to:

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

Sec. 323D-54 Exemptions from certificate of need requirement. Nothing in this part or rules thereunder with respect to the requirements for certification of need applies to:

- (1) Offices of physicians, dentists, or other practitioners of the healing arts in private practice as distinguished from organized ambulatory health care facilities, or laboratories, as defined in section 321-11(12), except in any case of purchase or acquisition of equipment attendant to the delivery of health care service and the instruction or supervision therefor for any such private office or clinic or laboratory involving a total expenditure in excess of \$150,000;
- (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) Dispensaries of infirmaries in correctional or educational facilities;
- (4) Dwelling establishments, such as hotels, motels, and rooming or boarding houses that do not regularly provide health care facilities or health care services;
- (5) Any home or institution conducted only for those who, pursuant to the teachings, faith, or belief of any group, depend for healing upon prayer or other spiritual means.

PART VI. GENERAL ADMINISTRATION

Sec. 323D-61 Personnel. The administrator of the state agency shall hire necessary personnel under chapters 76 and 77 to carry out the purposes of this chapter.

Sec. 323D-62 Rules. The state agency may adopt necessary rules for the purposes of this chapter in accordance with chapter 91."

SECTION 3. Act 152, Session Laws of Hawaii 1976, is repealed.

SECTION 4. 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 the underscoring.*

SECTION 5. This Act shall take effect upon its approval.

(Approved June 4, 1977.)

*Edited accordingly.