

A Bill for an Act Relating to Health Planning.

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

SECTION 1. Section 323D-2, Hawaii Revised Statutes, is amended by amending the definition of "secretary" to read:

"(2) "Secretary" means the secretary of the United States Department of Health, Education, and Welfare, or the secretary of the federal agency that is the successor to the United States Department of Health, Education, and Welfare."

SECTION 2. Section 323D-11, Hawaii Revised Statutes, is amended to read:

"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 subject to section 26-34. The state agency shall administer the state health planning activities to meet the applicable federal requirements."

SECTION 3. Section 323D-12, Hawaii Revised Statutes, is amended to read:

"Sec. 323D-12 Functions; state agency. (a) The state agency shall:

- (1) Conduct the health planning activities of the State in coordination with the subarea councils, implement the state health plan, and determine the statewide health needs of the State after providing reasonable opportunity for the submission of written recommendations respecting the needs by the department of health and other state agencies, designated by the governor for the purpose of making the recommendations, and after consulting with the statewide council. If any recommendation of any subarea health planning council is not incorporated into the state health plan an explanation stating the reasons for non-incorporation shall be appended to that plan.
- (2) Prepare, review at least triennially, and revise as necessary the preliminary state health plan. The state agency shall refer the preliminary state health plan to the department of health and other state agencies designated by the governor to review the goals and related resource requirements of the preliminary state health plan and to make written recommendations to the state agency respecting the goals and requirements.
- (3) Prepare, review, and revise the annual implementation plan.
- (4) Assist the statewide council in the performance of its functions.
- (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, but not less often than every five years, the appropriateness of at least those institutional and home health services offered in the State and with respect to which goals have been established in the state health plan. In making the appropriateness review, the state

agency shall at least consider the need for the service, its accessibility and availability, its financial viability, its cost effectiveness, and the quality of service provided.

- (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) Prepare an inventory of the health care facilities, other than federal health care facilities, located in the State and evaluate on an ongoing basis the physical condition of the facilities.
- (10) Provide technical assistance to persons, public or private, in obtaining and filling out the necessary forms for the development of projects and programs.
- (11) Do all things necessary as required by federal and state laws.

(b) If in determining the statewide health needs or in preparing or revising the preliminary state health plan, the state agency does not take an action proposed in a written recommendation submitted to the state agency pursuant to section 323D-12(a) (1) or section 323D-12(a) (2), the state agency shall when publishing the needs or health plan make available for public inspection a written statement of its reasons for not taking the action.”

SECTION 4. Section 323D-13, Hawaii Revised Statutes, is amended to read:

“**Sec. 323D-13 Statewide health coordinating council.** (a) There is established a statewide health coordinating council which shall be advisory to the state agency and the membership of which as appointed by the governor shall not exceed thirty members.

(b) The members of the statewide council shall be appointed by the governor in accordance with section 26-34, provided that a nonvoting, ex officio member who is the representative of the Veterans’ Administration shall be designated by the Veterans’ Administration. The consumer membership of the statewide council shall be broadly representative of the age, sex, ethnic, income, and other groups that make up the population of the State. The statewide council shall consist of:

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

Members of the statewide council who are consumers of health care and who are not providers of health care shall include individuals who represent rural and

urban medically underserved populations if these populations exist in the State. In addition the total membership of the statewide council shall include representation as may be required by applicable federal law or implementing federal regulations.

(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.

(d) The number of members necessary to constitute a quorum to do business shall consist of a majority of all members who have accepted nomination to the council, and have been confirmed and qualified as members of the council. When a quorum is in attendance, the concurrence of a majority of the members in attendance shall make any action of the council valid.

(e) No member of the statewide council shall, in the exercise of any function of the statewide council described in section 323D-14(5), vote on any matter before the statewide council respecting any individual or entity with which the member has or, within the twelve months preceding the vote, had any substantial ownership, employment, medical staff, fiduciary, contractual, creditor, or consultative relationship. The statewide council shall require each of its members who has or has had such a relationship with an individual or entity involved in any matter before the statewide council to make a written disclosure of the relationship before any action is taken by the statewide council with respect to the matter in the exercise of any function described in section 323D-14 and to make the relationship public in any meeting in which the action is to be taken.”

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

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

- (1) Prepare, review at least triennially, and revise as necessary the state health plan to meet the applicable federal requirements.
- (2) Review applications for planning and medical facilities grants pursuant to applicable federal requirements, and submit a report of its comments to the secretary pursuant to applicable federal requirements.
- (3) Advise the state agency on matters relating to its functions.
- (4) Review annually and recommend approval or disapproval of any state plan and any application and any revision of a state plan or application submitted to the secretary as a condition to the receipt of any funds under allotments made to the State under the Public Health Service Act, the Community Mental Health Centers Act, section 409 of the Drug Abuse Office and Treatment Act of 1972, or the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 pursuant to the applicable federal requirements.
- (5) Appoint the review panel pursuant to section 323D-42.
- (6) Review and comment upon the following actions by the state agency before such actions are made final:
 - (A) The establishment, annual review, and amendment of the annual implementation plan.
 - (B) The development and publication of specific plans and programs for

achieving the objectives established in the annual implementation plan.

- (C) The making of grants and contracts from the area health services development fund pursuant to the applicable federal requirements.
- (D) The making of findings as to the need for new institutional health services proposed to be offered in the State and applications for certificate of need.
- (E) The making of findings as to the appropriateness of those institutional and home health services offered in the State and with respect to which goals have been established in the state health plan, pursuant to the applicable federal requirements.
- (F) The approval or disapproval of each proposed use of federal health funds within the State, pursuant to the applicable federal requirements.”

SECTION 6. Section 323D-15, Hawaii Revised Statutes, is amended to read:

“**Sec. 323D-15 State health plan.** There shall be a state health plan pursuant to the Public Health Service Act, as amended, which shall include a chapter on inpatient care and medical facilities and which shall include the special needs of the geographic subareas within the State to provide a comprehensive and coordinated statewide health care system.”

SECTION 7. Section 323D-17, Hawaii Revised Statutes, is amended to read:

“**Sec. 323D-17 Public hearings required.** In the preparation of the state health plan or amendments to the state health plan, the state agency and the statewide council shall conduct a public hearing on the proposed plan or the amendments and shall comply with the provisions for notice of public hearings in chapters 91 and 92, and with the applicable federal requirements.”

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

“(a) 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 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 subarea health planning council shall recommend for gubernatorial appointment at least one person from its membership to be on the statewide council."

SECTION 9. Section 323D-23, Hawaii Revised Statutes, is amended to read:

"Sec. 323D-23 Subarea health planning councils, composition, appointment. Each subarea health planning council shall be constituted in a manner consistent with the applicable federal requirements: 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."

SECTION 10. Part IV of Chapter 323D, Hawaii Revised Statutes, is repealed.

SECTION 11. Section 323D-41, Hawaii Revised Statutes, is amended to read:

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

- (1) "Applicant" means any person 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 activities as set forth in the definitions under section 323D-41(4). The term includes the cost of studies, surveys, designs, plans, working drawings, specifications, and other preliminaries necessary for the activities as set forth in the definitions under section 323D-41(4). The term includes the fair market values of facilities and equipment obtained by donation or lease or comparable arrangements as though the items had been acquired by purchase. The term includes the fair market values of facilities and equipment transferred for less than fair market value, if a transfer of the facilities or equipment at fair market value would be subject to review under section 323D-43.
- (3) "Certificate of need" means an authorization, when required pursuant to section 323D-43, to construct, expand, alter, or convert a health care facility or to initiate, expand, develop, or modify a health care service.
- (4) "Construct", "expand", "alter", "convert", "develop", "initiate", or "modify" includes the erection, building, reconstruction, modernization, improvement, purchase, acquisition, or establishment of a health care facility or health care service; the purchase or acquisition of equipment attendant to

the delivery of health care service and the instruction or supervision therefor; the arrangement or commitment for financing the offering or development of a health care facility or health care service; any obligation for a capital expenditure by a health care facility; and studies, surveys, designs, plans, working drawings, specifications, procedures, and other actions necessary for any such undertaking, which will:

- (A) Result in a total capital expenditure in excess of the expenditure minimum, 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.
- (5) "Expenditure minimum" means \$150,000, unless otherwise adjusted. The state agency may adopt rules in conformity with chapter 91 which provide that the expenditure minimum may be periodically adjusted to reflect any change in an index maintained or developed by the United States Department of Commerce and designated by the secretary by federal regulation for purposes of making the adjustment.
- (6) "Health" includes physical and mental health.
- (7) "Health care facility" and "health care service" include any program, institution, place, building, or agency, or portion thereof, private or public, other than federal facilities or services, whether organized for profit or not, used, operated, or designed to provide medical diagnosis, treatment, nursing, rehabilitative, or preventive care to any person or persons. The terms include, but are not limited to, health care facilities and health care services commonly referred to as hospitals, extended care and rehabilitation centers, nursing homes, skilled nursing facilities, intermediate care facilities, hospices for the terminally ill that require licensure or certification by the department of health, kidney disease treatment centers including free-standing 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.
- (8) "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.

- (9) "Person" means an individual or a natural person, a trust or estate, a society, a firm, an assembly, a partnership, a corporation, a professional corporation, an association, the State, any political subdivision of the State, a county, a state agency or any instrumentality of the State, a county agency or any instrumentality of a county.
- (10) "Physician" means a doctor of medicine or osteopathy who is legally authorized to practice medicine and surgery by the State.
- (11) "Review panel" means the panel established pursuant to section 323D-42.
- (12) "Substantially modify, decrease, or increase the scope or type of health service" refers to the addition of a clinically related (i.e., diagnostic, curative, or rehabilitative) service not previously provided or the termination of such a service which had previously been provided."

SECTION 12. Section 323D-43, Hawaii Revised Statutes, is amended to read:

"Sec. 323D-43 Certificates of need. (a) No person, public or private, non-profit 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 the expenditure minimum; or
- (2) Substantially modify, decrease, or increase the scope or type of health service rendered; or
- (3) Increase, decrease, or change the class of usage of the bed complement of a health care facility, or relocate beds from one physical facility or site to another,

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

(b) No certificate of need shall be issued unless the state agency has first determined that there is a public need for the facility or the service. Each decision of the state agency to issue a certificate of need shall, except in an emergency situation that poses a threat to public health, be consistent with the state health plan in effect under section 323D-15. Each certificate of need issued shall be valid for a period of one year from the date of issuance unless the period is extended for good cause by the state agency.

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

- (1) The health care needs of the population to be served,
- (2) The relationship of the proposal to the state health plan described in section

- 323D-15 and the annual implementation plan described in section 323D-16,
- (3) The relationship of the proposal to the long-range development plan, if any, of the applicant,
 - (4) The relationship of the proposal to the existing health care system of the area,
 - (5) The availability of less costly or more effective alternative methods of providing service,
 - (6) The quality of the health care services proposed,
 - (7) The accessibility of the health care services proposed,
 - (8) The immediate and long term financial feasibility of the proposal,
 - (9) The probable impact of the proposal on the costs of and charges for providing health services by the applicant,
 - (10) The probable impact of the proposal on the overall costs of health services to the community,
 - (11) In the case of health services proposed to be provided,
 - (A) The availability of resources, including health manpower, management personnel, and funds for capital and operating needs, for the provision of the services,
 - (B) The effect of the means proposed for the delivery of the services on the clinical needs of health professional training programs in the area in which the services are to be provided,
 - (C) If the services are to be available in a limited number of facilities, the extent to which the health-profession schools in the area will have access to the services for training purposes,
 - (D) The availability of alternative uses of the resources for the provision of other health services, and
 - (E) The extent to which the proposed services will be accessible to all the residents of the area to be served by the services,
 - (12) The relationship of the services proposed to ancillary or support services,
 - (13) The special needs and circumstances of those entities which provide a substantial portion of their services to people who live outside the State,
 - (14) The special needs and circumstances of health maintenance organizations,
 - (15) The special needs and circumstances of biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages,
 - (16) In the case of a construction project,
 - (A) The costs and methods of the proposed construction, including the costs and methods of energy provision, and
 - (B) The probable impact of the construction project reviewed on the costs of providing health services by the applicant and on the costs and charges to the public of providing health services by other persons,
 - (17) The availability of evaluation mechanisms for supplying information to the state agency as required in section 323D-52,
 - (18) The applicant's compliance with federal, state, or county licensure standards,

- (19) The special circumstances of health service institutions and the need for conserving energy,
- (20) The factors which affect the effect of competition on the supply of the health services being reviewed, pursuant to the applicable federal requirements,
- (21) Improvements or innovations in the financing and delivery of health services which foster competition, in accordance with the applicable federal requirements, and which serve to promote quality assurance and cost effectiveness,
- (22) In the case of proposed health services or facilities, the efficiency and appropriateness of the use of existing health services or facilities similar to those proposed,
- (23) In the case of existing health services or facilities, the quality of care provided by the health services or facilities in the past,
- (24) In the case of an osteopathic or allopathic facility, the need for and the availability in the community of services and facilities for osteopathic and allopathic physicians and their patients,
- (25) The probable impact of the proposal on existing and proposed institutional training programs for doctors of medicine and osteopathy at the student, internship, and residency training levels.

(d) Criteria adopted for reviews in accordance with this section may vary according to the purpose for which a particular review is being conducted or the type of health service being reviewed.”

SECTION 13. Section 323D-44, Hawaii Revised Statutes, is amended to read:

“Sec. 323D-44 Applications for certificates of need. (a) An applicant for a certificate of need shall file an application with the state agency. The state agency shall provide technical assistance to the applicant in the preparation and filing of the application. The state agency shall not accept an application for review until the application is complete and includes all necessary information required by the state agency. The state agency shall determine if the application is complete within thirty days of receipt of the application. If the state agency determines that the application is incomplete, the state agency shall inform the applicant of the additional information that is required to complete the application. When the state agency determines that the application is complete, the period for agency review described in subsection (b) shall begin, and the state agency shall transmit the completed application to the appropriate subarea councils, the review panel, the statewide council, appropriate individuals, and appropriate public agencies. The state agency may require the applicant to provide copies of the application to the state agency, the appropriate subarea councils, the review panel, the statewide council, appropriate individuals, and appropriate public agencies. If, during the period for agency review, the state agency requires the applicant to submit information respecting the subject of the review, the period for agency review shall, at the request of the applicant, be extended fifteen days.

(b) The state agency shall approve or deny or grant conditional certification to an application within ninety days after the beginning of the period for agency review unless the state agency within the ninety days notifies the applicant in writing that the

period for agency review of the application has been extended by the state agency sixty days beyond the ninety days. If the state agency fails to approve or deny or grant conditional certification to an application within the period for agency review, the applicant may, within ninety days following the expiration of the period for agency review, bring an action in the nature of mandamus in the circuit court of the circuit in which the applicant resides or in the circuit in which the health care facility or health care service is or was planned to be located to compel the state agency to approve or deny or grant conditional certification to the applicant.

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

(d) Notwithstanding anything to the contrary in subsections (a) and (b), the state agency may adopt rules in conformity with chapter 91 providing that all completed applications pertaining to similar types of services, facilities, or equipment affecting the same health service area shall be considered in relation to each other but no less often than twice a year."

SECTION 14. Section 323D-45, Hawaii Revised Statutes, is amended to read:

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

(b) At a public meeting in which a subarea council, the review panel, or the statewide council considers an application for a certificate of need, any person shall have the right to be represented by counsel and to present oral or written arguments and evidence relevant to the application; any person directly affected by the application may conduct reasonable questioning of persons who make factual allegations relevant to the application; any staff member of the state agency may conduct reasonable questioning of persons who make factual allegations relevant to the application; and a record of the meeting shall be kept."

SECTION 15. Chapter 323D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read:

"Sec. 323D- Ex parte contacts prohibited. (a) There shall be no ex parte contacts:

(1) In the case of an application for a certificate of need, between the applicant

for the certificate of need, any person acting on behalf of the applicant, any person in favor of the application or any person opposed to the issuance of a certificate of need and any person in the state agency who exercises any responsibility respecting the application, after the commencement of the state agency's review of the application and before the state agency makes a decision on the application, on any matter related to or arising out of the application for a certificate of need;

- (2) In the case of a proposed withdrawal of a certificate of need, between the holder of the certificate of need, any person acting on behalf of the holder, any person opposed to the withdrawal or any person in favor of the withdrawal and any person in the state agency who exercises any responsibility respecting withdrawal of the certificate of need, after the commencement of state agency proceedings on the proposed withdrawal and before the state agency makes a decision on the proposed withdrawal, on any matter related to or arising out of the proposed withdrawal of the certificate of need; and
- (3) In the case of an application for an exemption from obtaining a certificate of need, between the applicant for an exemption, any person acting on behalf of the applicant, any person in favor of the application or any person opposed to the application and any person in the state agency who exercises any responsibility respecting the application, after the commencement of the state agency's review of the application and before the state agency makes a decision on the application, on any matter related to or arising out of the application for an exemption from obtaining a certificate of need.

(b) The prohibition against ex parte contacts shall not apply to any written communication or a copy thereof which is promptly filed as a public record with the state agency."

SECTION 16. Chapter 323D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read:

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

- (1) Approval of the application is required to meet the needs of the members of the health maintenance organization and of the new members which the organization can reasonably be expected to enroll, and
 - (2) The health maintenance organization is unable to provide, through services or facilities which can reasonably be expected to be available to the organization, its institutional health services in a reasonable and cost-effective manner which is consistent with the basic method of operation of the organization and which makes the services available on a long-term basis through physicians and other health professionals associated with the organization.
- (b) Unless there is an exemption from obtaining a certificate of need, a health

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care facility or any part thereof or medical equipment with respect to which a certificate of need was issued pursuant to this section may not be sold or leased or donated or transferred and a controlling interest in the health care facility or part thereof or medical equipment may not be acquired unless the state agency issues a certificate of need approving the sale, lease, donation, transfer, or acquisition.”

SECTION 17. Chapter 323D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read:

“Sec. 323D- Approval of applications required to meet safety, licensure, or accreditation standards. (a) Notwithstanding section 323D-43(c), the state agency shall approve an application for a certificate of need for a capital expenditure which is required:

- (1) To eliminate or prevent imminent safety hazards as defined by federal, state, or county fire, building, or life safety codes or regulations, or
- (2) To comply with state licensure standards, or
- (3) To comply with accreditation standards, compliance with which is required to receive reimbursements under title XVIII of the Social Security Act or payments under a state plan for medical assistance approved under title XIX of such Act,

unless the state agency finds that the facility or service with respect to which the capital expenditure is proposed to be made is not needed or that the obligation of the capital expenditure is not consistent with the state health plan in effect under section 323D-15.

(b) An application for a certificate of need approved by the state agency under this section shall be approved only to the extent that the capital expenditure is required to eliminate or prevent the hazards described in paragraph (1) or to comply with the standards described in paragraph (2) or (3).”

SECTION 18. Section 323D-46, Hawaii Revised Statutes, is amended to read:

“Sec. 323D-46 Conditional certification. The state agency shall 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 establish a time period not to exceed one hundred fifty days from the date of the conditional certification within which the applicant shall certify to the state agency that the required modifications have been made. The state agency shall require a statement from the applicant certifying that the required modifications have been made before a certificate of need is issued. The state agency shall deny any application in which the required modifications have not been made within the time period established by the state agency.”

SECTION 19. Chapter 323D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read:

“Sec. 323D- Increase in project cost. (a) In issuing a certificate of need, the state agency shall specify in the certificate of need the maximum amount of capital expenditures which may be obligated under the certificate of need.

- (b) The state agency shall adopt rules in conformity with chapter 91 requiring

the holder of a certificate of need to obtain state agency approval or an additional certificate of need if the amount of capital expenditures obligated or expected to be obligated for the project exceeds the maximum amount specified in the certificate of need.”

SECTION 20. Chapter 323D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read:

“Sec. 323D- Withdrawal of a certificate of need. (a) After the issuance of a certificate of need, the state agency shall periodically review the progress of the project. The state agency may withdraw the certificate of need, if the state agency determines on the basis of the review that:

- (1) The holder of the certificate of need is not meeting the timetable specified in the approved application for the certificate of need and is not making a good faith effort to meet it; or
- (2) The project being implemented differs substantially from that which was approved by the state agency.

(b) The state agency may withdraw at any time a certificate of need or an exemption from obtaining a certificate of need, if the state agency determines that the applicant procured the certificate of need or the exemption by fraud, misrepresentation, or corruption, or that the applicant submitted or caused to be submitted to the state agency false statements or information in connection with the application for the certificate of need or the exemption.

(c) The state agency shall adopt rules in conformity with chapter 91 for the withdrawal of certificates of need.”

SECTION 21. Section 323D-48, Hawaii Revised Statutes, is amended to read:

“Sec. 323D-48 Judicial review of state agency decisions. (a) If an application for a certificate of need or for an exemption from obtaining a certificate of need is denied, the state agency shall give notice to the applicant in writing stating the grounds for the denial. Any person adversely affected by a final decision of the state agency with respect to a certificate of need or an application for an exemption may appeal in the manner provided in chapter 91 to the circuit court of the circuit in which the person resides or in the circuit in which the health care facility or health care service is or was planned to be located.

(b) Any person adversely affected by a final decision of the state agency with respect to the withdrawal of a certificate of need may appeal in the manner provided in chapter 91 to the circuit court of the circuit in which the person resides or in the circuit in which the health care facility or health care service is or was planned to be located.”

SECTION 22. Section 323D-51, Hawaii Revised Statutes, is amended to read:

“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 who is not the holder of a certificate of need and who is not exempted from obtaining 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 the 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.”

SECTION 23. Section 323D-54, Hawaii Revised Statutes, is amended to read:

“**Sec. 323D-54 Exemption from certificate of need requirements.** (a) Nothing in this part or rules thereunder with respect to the requirement for certificates 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, 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 private office or clinic involving a total expenditure in excess of the expenditure minimum;
- (2) 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 laboratory involving a total expenditure in excess of the expenditure minimum;
- (3) Dispensaries and first aid stations located within business or industrial establishments and 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;
- (4) Dispensaries or infirmaries in correctional or educational facilities;
- (5) Dwelling establishments, such as hotels, motels, and rooming or boarding houses that do not regularly provide health care facilities or health care services;
- (6) 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.

(b) The state agency shall adopt rules in conformity with chapter 91 to establish criteria to exempt certain proposed expenditures, health care service changes, or bed changes, by health care facilities which are determined not to have a significant impact on the health care system. The criteria may include but need not be limited to the range of services offered by the facility, the gross annual revenue of the facility, and the annual operating expenses of the service.”

SECTION 24. Chapter 323D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read:

“Sec. 323D- Exemption for health maintenance organizations; application for exemption. (a) Notwithstanding anything in this part or rules thereunder with respect to the requirement for certificates of need, the state agency shall not require a certificate of need for the offering of an inpatient institutional health service or the acquisition of major medical equipment for the provision of an inpatient institutional health service or the obligation of a capital expenditure for the provision of an inpatient institutional health service by:

- (1) A health maintenance organization or a combination of health maintenance organizations if:
 - (A) The organization or combination of organizations has, in the service area of the organization or the service areas of the organizations in the combination, an enrollment of at least 50,000 individuals,
 - (B) The facility in which the service will be provided is or will be geographically located so that the service will be reasonably accessible to the enrolled individuals, and
 - (C) At least seventy-five per cent of the patients who can reasonably be expected to receive the institutional health service will be individuals enrolled with the organization or organizations in the combination;
- (2) A health care facility if:
 - (A) The facility primarily provides or will provide inpatient health services,
 - (B) The facility is or will be controlled, directly or indirectly, by a health maintenance organization or a combination of health maintenance organizations which has, in the service area of the organization or the service areas of the organizations in the combination, an enrollment of at least 50,000 individuals,
 - (C) The facility is or will be geographically located so that the service will be reasonably accessible to the enrolled individuals, and
 - (D) At least seventy-five per cent of the patients who can reasonably be expected to receive the institutional health service will be individuals enrolled with the organization or organizations in the combination; or
- (3) A health care facility or portion thereof if:
 - (A) The facility is or will be leased by a health maintenance organization or combination of health maintenance organizations which has, in the service area of the organization or the service areas of the organizations in the combination, an enrollment of at least 50,000 individuals and on the date the application is submitted under subsection (b) at least fifteen years remain in the term of the lease,
 - (B) The facility is or will be geographically located so that the service will be reasonably accessible to the enrolled individuals, and
 - (C) At least seventy-five per cent of the patients who can reasonably be expected to receive the institutional health service will be individuals enrolled with the organization or organizations in the combination,

if, with respect to the offering, acquisition, or obligation, the state agency has, upon application under subsection (b), granted an exemption from the requirement to the organization, combination of organizations, or facility.

(b) A health maintenance organization, combination of health maintenance organizations, or health care facility shall not be exempt under subsection (a) from obtaining a certificate of need before offering an institutional health service, acquiring major medical equipment, or obligating capital expenditures, unless:

- (1) It has submitted, at the time and in the form and manner as the state agency shall prescribe, an application for an exemption,
- (2) The application contains the information respecting the organization, combination, or facility and the proposed offering, acquisition, or obligation as the state agency may require to determine, if the organization or combination meets the requirements of subsection (a) or the facility meets or will meet the requirements of subsection (a), and
- (3) The state agency approves the application for an exemption.

In the case of a proposed health care facility or portion thereof which has not begun to provide institutional health services on the date an application is submitted under this subsection with respect to the facility or portion thereof, the facility or portion thereof shall meet the applicable requirements of subsection (a) when the facility first provides the services. The state agency shall approve an application submitted under this subsection if the state agency determines that the applicable requirements of subsection (a) are met.

(c) A health care facility or any part thereof or medical equipment with respect to which an exemption was granted under subsection (a) may not be sold or leased and a controlling interest in the facility or equipment or in a lease of the facility or equipment may not be acquired and a health care facility described in paragraph (3) of subsection (a) which was granted an exemption under subsection (a) may not be used by any person other than the lessee described in paragraph (3) of subsection (a) unless:

- (1) The state agency issues a certificate of need approving the sale, lease, acquisition, or use; or
- (2) The state agency determines, upon application, that:
 - (A) The entity to which the facility or equipment is proposed to be sold or leased, which intends to acquire the controlling interest or which intends to use the facility is a health maintenance organization or a combination of health maintenance organizations which meets the requirements of subparagraph (A) of paragraph (1) of subsection (a), and
 - (B) With respect to the facility or equipment, the entity meets the requirements of subparagraphs (B) and (C) of paragraph (1) of subsection (a) or the requirements of subparagraphs (A) and (B) of paragraph (2) of subsection (a)."

SECTION 25. Section 323D-62, Hawaii Revised Statutes, is amended to read:

“Sec. 323D-62 Rules. The state agency and the statewide health coordinating council may adopt necessary rules for the purposes of this chapter in accordance with chapter 91.”

SECTION 26. Statutory material to be repealed is bracketed. New material is

underscored.*

SECTION 27. This Act shall take effect upon its approval.

(Approved May 17, 1980.)

*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.