

ACT 270

H.B. NO. 1025

A Bill for an Act Relating to Health Planning and Resources Development and Health Care Cost Control.

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

SECTION 1. Chapter 323D, Hawaii Revised Statutes, is amended by adding two new sections to part II to be appropriately designated and to read as follows:

“§323D- Information from providers of health insurance. The state agency may request providers of health insurance doing business in the State to submit to the state agency available statistical, financial, and other reports of information that the state agency finds necessary to perform its functions.

§323D- Confidentiality of information. The state agency may adopt rules in accordance with chapter 91 to provide that information submitted to the state agency by providers of health care and health care insurance concerning recipients of health care or health care insurance, or both, shall be confidential."

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

"§323D- Administrative review of certain applications for certificate of need. The state agency shall adopt rules in conformity with chapter 91 providing for administrative review and decision on certain applications for certificate of need without referring the applications to the subarea council, review panel, or statewide council. Applications subject to administrative review and decision under this section shall include, but are not limited to, applications which are:

- (1) Inconsistent with or contrary to the state health services and facilities plan under section 323D-15;
- (2) Determined not to have a significant impact on the health care system; or
- (3) Involve capital or annual operating expenses below a significant level.

§323D- Review of certain applications for certificate of need; waiver. The subarea council, the review panel, and the statewide council may, at their discretion, choose to waive their respective prerogatives of review of any certificate of need application.

§323D- Monitoring of approved certificates of need. The state agency may monitor implementation of approved certificates of need granted by the agency."

SECTION 3. Section 323D-1, Hawaii Revised Statutes, is amended to read as follows:

"§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.] promote accessibility for all the people of the State to quality health care services at reasonable cost."

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

1. By amending the definition of "expenditure minimum" to read as follows:

"“Expenditure minimum” means [\$600,000] \$4,000,000 for capital expenditures, [\$400,000] \$1,000,000 for [replacement of major medical equipment and \$250,000 for] new [major] or replacement medical equipment and \$400,000 for used medical equipment."

2. By amending the definition of "organized ambulatory health care facility" to read as follows:

"“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.] non-bed services as defined in the agency's rules of standard categories of health care services. The state agency may adopt rules to establish further criteria for differentiating between the private practice of medicine and organized ambulatory health care facilities."

3. By amending the definition of "substantially modify, decrease, or increase the scope or type of health service" to read as follows:

"Substantially modify, decrease, or increase the scope or type of health service" refers to the establishment of a new health care facility or health care service or 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."

4. By deleting the definition of "Secretary".

[""Secretary" means the secretary of the United States Department of Health and Human Services, or the secretary of the federal agency that is the successor to the United States Department of Health and Human Services."]

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

"§323D-12 Health planning and development functions; state agency.

(a) The state agency shall:

- (1) Have as a principal function the responsibility for controlling increases in health care costs. The state agency shall conduct such studies and investigations as may be necessary [in] as to the causes of health care [cost] costs including inflation [and annually shall recommend to the legislature measures designed to contain health care costs until such time as health care cost inflation substantially moderates]. The state agency may contract for services to implement this paragraph. The certificate of need program mandated under part V shall serve this function. The state agency shall promote the sharing of facilities or services by health care providers whenever possible to achieve economies and shall restrict unusual or unusually costly services to individual facilities or providers where appropriate.
- (2) Conduct the health planning activities of the State in coordination with the subarea councils, implement the state health services and facilities plan, and determine the statewide health needs of the State after consulting with the statewide council.
- (3) Prepare and revise as necessary the state health services and facilities plan.
- (4) Prepare, review, and revise the annual implementation plan.
- (5) Assist the statewide council in the performance of its functions.

- (6) Administer the state certificate of need program pursuant to part V.
- (7) Determine the need for new health services proposed to be offered within the State.
- (8) Assess existing health care services and facilities to determine whether there are redundant, excessive, or inappropriate services or facilities and make public findings of any that are found to be so. The state agency shall weigh the costs of the health care services or facilities against the benefits the services or facilities provide and there shall be a negative presumption against marginal services.
- (9) 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 services and facilities plan.
- (10) 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 and need for the facilities.
- (11) Provide technical assistance to persons, public or private, in obtaining and filling out the necessary forms for the development of projects and programs.]
- (2) 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 services and facilities plan.
- (3) Conduct the health planning activities of the State in coordination with the subarea councils, implement the state health services and facilities plan, and determine the statewide health needs of the State after consulting with the statewide council.
- (4) Administer the state certificate of need program pursuant to part V.
- (b) The state agency may:
 - (1) Prepare such reports and recommendations on Hawaii's health care costs and public or private efforts to reduce or control costs and health care quality as it deems necessary. The report may include, but not be limited to, a review of health insurance plans, the availability of various kinds of health insurance and malpractice insurance to consumers, and strategies for increasing competition in the health insurance field.
 - (2) Prepare and revise as necessary the state health services and facilities plan.
 - (3) Prepare, review, and revise the annual implementation plan.
 - (4) Assist the statewide council in the performance of its functions.
 - (5) Determine the need for new health services proposed to be offered within the State.
 - (6) Assess existing health care services and facilities to determine whether there are redundant, excessive, or inappropriate services or facilities and make public findings of any that are found to be so. The state agency shall weigh the costs of the health care services or facilities against the benefits the services or facilities provide and there shall be a negative presumption against marginal services.

- (7) Provide technical assistance to persons, public or private, in obtaining and filling out the necessary forms for the development of projects and programs.
- (8) Prepare reports, studies, and recommendations on emerging health issues, such as medical ethics, health care rationing, involuntary care, care for the indigent, and standards for research and development of biotechnology and genetic engineering.
- (9) Conduct such other activities as are necessary to meet the purposes of this chapter."

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

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

- (1) Prepare and revise as necessary the state health services and facilities plan.
- [(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) (2) Advise the state agency on actions under section 323D-12.
- [(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) (3) Appoint the review panel pursuant to section 323D-42.
- [(6)] (4) 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) (C) 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)] (D) The making of findings as to the appropriateness of those institutional and noninstitutional health services offered in the State.
 - [(F)] The approval or disapproval of each proposed use of federal health funds within the State, pursuant to the applicable federal requirements.]"

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

"§323D-17 Public hearings required. In the preparation of the state health services and facilities plan or amendments to the state health services

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and facilities 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 as follows:

“(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 services and 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(4)].
- (6)] (5) 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)] (6) Advise the state agency in the performance of its specific functions.
- [(8)] (7) Perform other such functions as agreed upon by the state agency and the respective subarea councils.
- [(9)] (8) 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 as follows:

“**§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. Chapter 323D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§323D- Disqualification from position or membership. The chairmen of the statewide council, the subarea health planning councils and the review panel shall not be employed by or married to health care providers.”

SECTION 11. Section 323D-43, Hawaii Revised Statutes, is amended to read as follows:

“§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 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 determined that:

- (1) There is a public need for the facility or the service; and
- (2) The cost of the facility or service will not be unreasonable in the light of the benefits it will provide and its impact on health care costs.

(c) The state agency may adopt criteria for certificate of need review which are consistent with this section. Such criteria may include but are not limited to need, cost, quality, accessibility, availability, and acceptability.

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 services and facilities 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 and expenditures for the project shall not exceed the maximum amount of the expenditures approved in the certificate of need.”

SECTION 12. Section 323D-45, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except for an administrative review as provided in section 323D-_____, or 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 and the review panel shall consider all relevant data and information submitted by the state agency, subarea councils, 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 the recommendation of the review panel at a public meeting and shall submit its recommendations to the state agency within such time as the state agency prescribes. The statewide council and the review panel may join together to hear or consider simultaneously information related to an application for a certificate of need.”

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

“§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 before a reconsideration committee for purposes of reconsideration of the agency's decision. The reconsideration committee shall consist of the administrator of the state agency and the chairpersons of the statewide council, the review panel, the plan development committee of the statewide council, and the appropriate subarea health planning council. The administrator shall be the chairperson of the reconsideration committee. A request for a public hearing shall be deemed by the [agency] reconsideration committee to have shown good cause, if [it]:

- (1) [Presents] It presents significant, relevant information not previously considered by the state agency[.];
- (2) [Demonstrates] It demonstrates that there have been significant changes in factors or circumstances relied upon by the state agency in reaching its decision[.];
- (3) [Demonstrates] It demonstrates that the state agency has materially failed to follow its adopted procedures in reaching its decision[, or];
- (4) [Provides] It provides such other bases for a public hearing as the state agency determines constitutes good causes[.]; or
- (5) The decision of the administrator differs from the recommendation of the statewide council.

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] reconsideration committee following a public hearing under this section shall be considered a decision of the state agency for purposes of section 323D-44.”

SECTION 14. Section 323D-54, Hawaii Revised Statutes, is amended to read as follows:

“§323D-54 Exemptions 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[.];
- (7) Dental clinics; or
- (8) Other facilities or services which the agency through the state-wide council chooses to exempt, by rules pursuant to section 323D-62.

[(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 15. Section 323D-45.2, Hawaii Revised Statutes, is repealed.

SECTION 16. Section 323D-55, Hawaii Revised Statutes, is repealed.

SECTION 17. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 18. This Act shall take effect July 1, 1987.

(Approved June 24, 1987.)

Note

- 1. Edited pursuant to HRS §23G-16.5.