

ACT 336

H.B. NO. 1841

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 adding a new definition to be appropriately inserted and to read:

““Primary care clinic” means a clinic for outpatient services providing all preventive and routine health care services, management of chronic diseases, consultation with specialists when necessary, and coordination of care across health care settings or multiple providers or both. Primary care clinic providers include:

- (1) General or family practice physicians;
- (2) General internal medicine physicians;
- (3) Pediatricians;
- (4) Obstetricians and gynecologists;
- (5) Physician assistants; and
- (6) Advanced practice registered nurses.”

SECTION 2. Section 323D-2, Hawaii Revised Statutes, is amended by amending the definition of “organized ambulatory health care facility” to read:

““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; cosmetic surgery centers; 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 nonbed 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.”

SECTION 3. Section 323D-2, Hawaii Revised Statutes, is amended by deleting the definition “annual implementation plan.”

[““Annual implementation plan” means the annual program plan pursuant to section 323D-16.”]

SECTION 4. Section 323D-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The state agency shall:

- (1) Have as a principal function the responsibility for [controlling increases in health care costs.] promoting accessibility for all the people of the State to quality health care services at reasonable cost. The state agency shall conduct such studies and investigations as may be necessary as to the causes of health care costs including inflation. 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) 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[.]; and
- (4) Administer the state certificate of need program pursuant to part V.”

SECTION 5. 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) Advise the state agency on actions under section 323D-12[.];
- (3) Appoint the review panel pursuant to section 323D-42[.]; and
- (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)] [(A)] The making of findings as to applications for certificate of need[.]; and
 - [(D)] [(B)] The making of findings as to the appropriateness of those institutional and noninstitutional health services offered in the State.”

SECTION 6. Section 323D-18, Hawaii Revised Statutes, is amended to read as follows:

“**§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. The information deemed necessary includes but is not limited to:

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

- (3) Projects that are wholly dedicated to meeting the State's obligations under court orders, including consent decrees, under section 323D-54(10);
- (4) Replacement of existing equipment with an updated equivalent under section 323D-54(11);
- (5) Primary care clinics under the expenditure thresholds under section 323D-54(12); and
- (6) Equipment and services related to that equipment, that are primarily intended for research purposes as opposed to usual and customary diagnostic and therapeutic care."

SECTION 7. 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] it relates 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 on the cost of reimbursable expenses incurred in the performance of their functions for inclusion in the state agency budget.
- (6) Advise the state agency in the performance of its specific functions.
- (7) Perform other such functions as agreed upon by the state agency and the respective subarea councils.
- (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 8. Section 323D-43, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(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] that 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.”

SECTION 9. Section 323D-44, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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.

Each application shall include a statement evaluating the facility’s or service’s probable impact on health care costs[. The statement shall include, in addition to an estimate of the total cost, a projection of the effect the facility or service will have on the following: total patient care budget; total number of admissions; total number of patient days; total number of outpatient visits; and such other information as the state agency may request.] and providing additional data as required by rule. The statement shall include cost projections for at least the first and [fifth] third years after its approval.

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.”

SECTION 10. Section 323D-44.5, Hawaii Revised Statutes, is amended to read as follows:

“**§323D-44.5 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 for recommendation as provided under section 323D-45]. Each application reviewed under this section [shall] may be subject to a public information meeting before the state agency makes its decision[, which public information meeting may be at a meeting of the subarea council, review panel, or statewide council]. The agency shall publish in a newspaper of general circulation in the State and in a newspaper that is printed and issued at least twice weekly in the county affected, a legal notice of applications for administrative review received by the agency. Interested persons may request in writing a public meeting before the agency renders a decision on the administrative application. If a request for a public meeting is received, the administrator will preside over the meeting. If no request is received by the agency within seven days of the legal notice publication date, no public meeting need be scheduled. Applications subject to administrative review and decision under this section shall include[,] but are not limited to[,] applications [which] that 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.”

SECTION 11. 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 reconsideration committee to have shown good cause, if:

- (1) It presents significant, relevant information not previously considered by the state agency;
- (2) It demonstrates that there have been significant changes in factors or circumstances relied upon by the state agency in reaching its decision;
- (3) It demonstrates that the state agency has materially failed to follow its adopted procedures in reaching its decision;
- (4) 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] ten working days of the state agency decision. A decision of the 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 12. Section 323D-50, Hawaii Revised Statutes, is amended to read as follows:

“§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] that has been revoked under this section shall not be restored except by action of the department.

(c) Any person who violates any provision of this chapter or rules adopted under this chapter, with respect to the agency’s requests for reporting, may be subject to an administrative penalty not to exceed \$2,000 for each seven-day period or fraction thereof that the violation continues. The administrator of the state agency may impose the administrative penalty specified in this section by order; provided that no penalty shall be assessed unless the person charged shall have been given

notice and an opportunity for a hearing pursuant to chapter 91. The administrative penalty contained in the notice of finding of violation shall become a final order unless, within twenty days of receipt of the notice, the person charged makes a written request for a hearing. For any judicial proceeding to recover the administrative penalty imposed, the administrator need only show that notice was given, a hearing was held or the time granted for requesting a hearing has expired without such a request, the administrative penalty was imposed, and that the penalty remains unpaid.”

SECTION 13. Section 323D-54, Hawaii Revised Statutes, is amended to read as follows:

“§323D-54 Exemptions from certificate of need requirements. 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) Nonpatient areas of care facilities such as parking garages and administrative offices;
- (9) Bed changes that involve ten per cent or ten beds of existing licensed bed types, whichever is less, of a facility’s total existing licensed beds within a two-year period;
- (10) Projects that are wholly dedicated to meeting the State’s obligations under court orders, including consent decrees, that have already determined that need for the projects exists;
- (11) Replacement of existing equipment with its modern-day equivalent;
- (12) Primary care clinics under the expenditure thresholds referenced in section 323D-2;
- (13) Equipment and services related to that equipment, that are primarily invented and used for research purposes as opposed to usual and customary diagnostic and therapeutic care;
- (14) Capital expenditures that are required;

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- (A) To eliminate or prevent imminent safety hazards as defined by federal, state, or county fire, building, or life safety codes or regulations;
 - (B) To comply with state licensure standards;
 - (C) 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; or
- [(8)] (15) Other facilities or services [which] that the agency through the statewide council chooses to exempt, by rules pursuant to section 323D-62.’’

SECTION 14. Section 323D-16, Hawaii Revised Statutes, is repealed.

SECTION 15. Statutory material to be repealed is bracketed.¹ New statutory material is underscored.

SECTION 16. This Act shall take effect upon its approval.

(Approved July 2, 1997.)

Note

1. Edited pursuant to HRS §23G-16.5.