H.B. NO. 3123

A BILL FOR AN ACT

RELATING TO ACCESS TO HEALTH CARE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The purpose of this Act is to improve the quality of Hawaii's health care system. In implementing chapter 323D, Hawaii Revised Statutes, the state health planning and development agency in the past has focused on its "gatekeeper" role by devoting substantial time and resources to adjudications of requests for a certificate of need. The certificate of need process (1) acts as an impediment to Hawaii health care providers who desire to expand their health care services; and (2) serves as a barrier to new medical providers starting up business in this State. This Act amends chapter 323D, Hawaii Revised Statutes, to clarify the "development" responsibility of the state health planning and development agency and to encourage the state health planning and development agency to focus greater time and resources on enhancing access to quality health care within this State.

Currently, chapter 323D mandates that health care providers seek a certificate of need from the state health planning and development agency if they wish (1) to begin offering most types

of health care services; (2) to end rendering most types of health care services; (3) to provide such health care services at a different location; or (4) to construct virtually any type of health care facility.

To encourage the development and expansion of the medical industry and to welcome improvements in medical technology, this Act broadens the list of facilities and services that are exempt from the certificate of need requirement under chapter 323D.

For those health care providers who remain subject to the certificate of need requirement, this Act further revises the certificate of need administrative process in chapter 323D to: (1) reverse the order in which the statewide health coordinating council ("statewide council") and the subarea health planning councils ("county councils") hear a certificate of need application so that the state health planning and development agency administrator and the county council are the last to consider the certificate of need request; (2) require the state health planning and development agency administrator to give greater weight to the county council's decision when the state council's and county council's recommendations conflict; (3) increase the expenditure minimums for capital expenditures and for new or replacement medical equipment; and (4) require that a

hearing on an applicant's request for reconsideration be held on the island where the new facility or activity will be based.

With these amendments to chapter 323D, the legislature anticipates that the State's health care services and health care facilities will be improved for the residents of Hawaii and will make Hawaii a destination location for patients in the Asia-Pacific region who are seeking quality health care services.

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

"**§323D- State agency review of subarea council and statewide council recommendations for issuance or denial of certificate of need.** In reviewing the recommendations of the respective subarea council and the statewide council regarding a certificate of need application, the state agency shall give greater weight to the recommendation of the respective subarea council if it conflicts with the recommendation of the statewide council, unless the state agency finds good cause exists to reject such recommendation."

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

1 "**§323D-1** [~~**Purpose.**~~] **General purpose and objectives.** The
2 purpose of this chapter is to establish a health planning and
3 resources development program to promote accessibility for all
4 the people of the State to quality health care services at
5 reasonable cost.
6 The objectives of this health planning and resources
7 development program are:
8 (1) To make broad policy determinations with respect to
9 development of the health care industry, and to
10 stimulate through research and demonstration projects
11 those industrial and economic development efforts that
12 offer the most immediate promise of expanding the
13 health care industry, and the types of health care
14 services available in this State, and of further
15 diversifying this State's economy;
16 (2) To determine through technical and research studies
17 the profit potential of new or expanded undertakings
18 in the health care industry and high technology
19 medical research;
20 (3) To disseminate information to assist current health
21 care providers and high technology medical researchers
22 in this State; to attract new health care providers

1 and high technology medical researchers to this State;
2 and to encourage capital investment in existing and
3 new areas of health care services and high technology
4 medical research;
5 (4) To encourage innovation of research into new medical
6 technologies to improve the lives of this State's
7 citizens as well as encourage others from within this
8 country and from the world to seek medical treatment
9 from health care providers and high technology medical
10 researchers in Hawaii;
11 (5) To enter into contracts as may be necessary or
12 advisable to accomplish the foregoing purpose and
13 objectives;
14 (6) To work collaboratively with other state departments
15 and agencies and with other governmental entities
16 operating both within and outside this State to
17 accomplish the foregoing purpose and objectives; and
18 (7) To disseminate information developed for or by the
19 program pertaining to the development of this State's
20 health care providers and high technology medical
21 researchers to assist the present health care and
22 medical research industry in this State; to attract

new industry and investment in this State in highly advanced medical technologies; and to lead this State into becoming America's vanguard of cutting edge medical technology, particularly in the Asia-Pacific region."

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

"**§323D-2 Definitions.** [~~As used in this chapter:~~] Whenever used in this chapter, and unless the context requires otherwise:

"Applicant" means any person who applies for a certificate of need under part V.

"Assisted living facility" means a combination of housing, health care services, and personalized support services designed to respond to individual needs, and to promote choice, responsibility, independence, privacy, dignity, and individuality. In this context, "health care services" means the provision of services in an assisted living facility that assists the resident in achieving and maintaining the highest state of positive well-being (i.e., psychological, social, physical, and spiritual) and functional status. This may include nursing assessment and monitoring, and the delegation of

1 nursing tasks by registered nurses pursuant to chapter 457, care
2 management, monitoring, records management, arranging for,
3 and/or coordinating health and social services.
4 "Capital expenditure" means any purchase or transfer of
5 money or anything of value or enforceable promise or agreement
6 to purchase or transfer money or anything of value incurred by
7 or in behalf of any person for construction, expansion,
8 alteration, conversion, development, initiation, or modification
9 as defined in this section. The term includes the:
10 (1) Cost of studies, surveys, designs, plans, working
11 drawings, specifications, and other preliminaries
12 necessary for construction, expansion, alteration,
13 conversion, development, initiation, or modification;
14 (2) Fair market values of facilities and equipment
15 obtained by donation or lease or comparable
16 arrangements as though the items had been acquired by
17 purchase; and
18 (3) Fair market values of facilities and equipment
19 transferred for less than fair market value, if a
20 transfer of the facilities or equipment at fair market
21 value would be subject to review under section 323D-
22 43.

1 "Certificate of need" means an authorization, when required
2 pursuant to section 323D-43, to construct, expand, alter, or
3 convert a health care facility or to initiate, expand, develop,
4 or modify a health care service.
5 "Construct", "expand", "alter", "convert", "develop",
6 "initiate", or "modify" includes the erection, building,
7 reconstruction, modernization, improvement, purchase,
8 acquisition, or establishment of a health care facility or
9 health care service; the purchase or acquisition of equipment
10 attendant to the delivery of health care service and the
11 instruction or supervision therefor; the arrangement or
12 commitment for financing the offering or development of a health
13 care facility or health care service; any objection for a
14 capital expenditure by a health care facility; and studies,
15 surveys, designs, plans, working drawings, specifications,
16 procedures, and other actions necessary for any such
17 undertaking, which will:
18 (1) Result in a total capital expenditure in excess of the
19 expenditure minimum,
20 (2) Substantially modify, decrease, or increase the scope
21 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.

"Expenditure minimum" means [~~$4,000,000~~] $8,000,000 for capital expenditures[~~,$1,000,000~~] and $2,000,000 for new or replacement medical equipment [~~and $400,000 for used medical equipment~~].

"Extended care adult residential care home" means an adult residential care home providing twenty-four-hour living accommodation for a fee, for adults unrelated to the licensee. The primary caregiver shall be qualified to provide care to nursing facility level individuals who have been admitted to a Medicaid waiver program, or persons who pay for care from private funds and have been certified for this type of facility. There shall be two categories of extended care adult residential care homes, which shall be licensed in accordance with rules adopted by the department of health:

(1) Type I home shall consist of five or less unrelated persons with no more than two extended care adult residential care home residents; and

(2) Type II home shall consist of six or more unrelated persons and one or more persons may be extended care adult residential care home residents.

"Health" includes physical and mental health.

"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 freestanding hemodialysis units, outpatient clinics, organized ambulatory health care facilities, emergency care facilities and centers, home health agencies, health maintenance organizations, and others providing similarly organized services regardless of nomenclature.~~]

"Health care provider" means a health care facility, physician, dentist licensed under chapter 448, chiropractor licensed under chapter 442, optometrist licensed under chapter 459, podiatrist licensed under chapter 463E, psychologist

1 licensed under chapter 465, occupational therapist subject to
2 chapter 457G, and physical therapist licensed under chapter
3 461J.
4 "Organized ambulatory health care facility" means a
5 facility not part of a hospital, which is organized and operated
6 to provide health services to outpatients.
7 "Person" means an individual or a natural person, a trust
8 or estate, a society, a firm, an assembly, a partnership, a
9 corporation, a professional corporation, an association, the
10 State, any political subdivision of the State, a county, a state
11 agency or any instrumentality of the State, a county agency or
12 any instrumentality of a county.
13 "Physician" means a doctor of medicine or osteopathy who is
14 legally authorized to practice medicine and surgery by the
15 State.
16 "Primary care clinic" means a clinic for outpatient
17 services providing all preventive and routine health care
18 services, management of chronic diseases, consultation with
19 specialists when necessary, and coordination of care across
20 health care settings or multiple providers or both. Primary
21 care clinic providers include:
22 (1) General or family practice physicians;

1 (2) General internal medicine physicians;

2 (3) Pediatricians;

3 (4) Obstetricians and gynecologists;

4 (5) Physician assistants; and

5 (6) Advanced practice registered nurses.

6 "Review panel" means the panel established pursuant to

7 section 323D-42.

8 "State agency" means the state health planning and

9 development agency established in section 323D-11.

10 "State health services and facilities plan" means the

11 comprehensive plan for the economical delivery of health

12 services in the State prepared by the statewide council.

13 "Statewide council" means the statewide health coordinating

14 council established in section 323D-13.

15 "Subarea" means one of the geographic subareas designated

16 by the state agency pursuant to section 323D-21.

17 "Subarea council" means a subarea health planning council

18 established pursuant to section 323D-21.

19 "Substantially modify, decrease, or increase the scope or

20 type of health service" refers to the establishment of a new

21 health care facility or health care service or the addition of a

22 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 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 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.

(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) 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 making of findings as to applications for certificate of need; and~~

~~(B) The making of findings as to the appropriateness of those institutional and noninstitutional health services offered in the State.~~]

(4) Perform the initial review of certificate of need applications including making recommendations to the

state agency and the respective subarea council and commenting upon the certificate of need application."

SECTION 7. 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~~

1 ~~(6) Equipment and services related to that equipment, that~~
2 ~~are primarily intended for research purposes as~~
3 ~~opposed to usual and customary diagnostic and~~
4 ~~therapeutic care.~~]"
5 SECTION 8. Section 323D-22, Hawaii Revised Statutes, is
6 amended by amending subsection (a) to read as follows:
7 "(a) Each subarea health planning council shall review,
8 seek public input, and make recommendations relating to health
9 planning for the geographical subarea it serves. In addition,
10 the subarea health planning councils shall:
11 (1) Identify and recommend to the state agency and the
12 council the data needs and special concerns of the
13 respective subareas with respect to the preparation of
14 the state plan.
15 (2) Provide specific recommendations to the state agency
16 and the council regarding the highest priorities for
17 health services and resources development.
18 (3) Review the state health services and facilities plan
19 as it relates to the respective subareas and make
20 recommendations to the state agency [~~and the council~~].
21 (4) Advise the state agency in the administration of the
22 certificate of need program for their respective

subareas[~], including reviewing comments of the statewide council and the review panel, and making a final recommendation to the state agency.

(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 9. 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. Each application reviewed under this section may be subject to a public information meeting before the state agency makes its decision. The agency, in the State and in the county affected,

shall give public 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 public notice 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 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 10. Section 323D-44.6, Hawaii Revised Statutes, is amended to read as follows:

"[~~[~~]**§323D-44.6**[~~]~~] **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."

SECTION 11. Section 323D-45, Hawaii Revised Statutes, is amended to read as follows:

"**§323D-45 Subarea council, review panel, and statewide council recommendations for issuance or denial of certificates of need.** (a) Except for an administrative review as provided in section 323D-44.5, 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 review panel, and the appropriate subarea council. The [~~subarea~~] statewide 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~~] subarea council shall consider the recommendation of the review panel and the statewide council 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, and the subarea council may join together to hear or consider simultaneously information related to an application for a certificate of need.

(b) At a public meeting in which [~~a subarea council or the review panel~~] the statewide council, review panel, or subarea 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 12. Section 323D-47, Hawaii Revised Statutes, is amended to read as follows:

"**§323D-47 Request for reconsideration.** (a) 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[~~,~~] and the review panel, [~~the plan development committee of the statewide council,~~] and the chairs and vice chairs of 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~~] subarea council.

(b) To be effective a request for such a hearing shall be received within [~~ten working~~] thirty calendar 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.

(c) The public hearing on a request for reconsideration shall be held on the island where the facility is to be built or the service is to be rendered."

SECTION 13. Section 323D-49, Hawaii Revised Statutes, is amended to read as follows:

"**§323D-49 Certificates of need; licenses and permits.** (a) [~~No~~] When a certificate of need is required, no permit or license shall be issued by any county or state officer for the development, construction, expansion, alteration, conversion, initiation, or modification of a health care facility or health care service, other than an existing hospital, or for the operation of a new health care facility or health care service unless there is submitted in connection with the application for such permit or license a current certificate of need issued by the state agency or a statement issued by the state agency that

the health care facility or health care service is not required to hold a certificate of need under this part.

(b) [~~No~~] When a certificate of need is required, no building permit shall be issued by any county or state officer for the development, construction, expansion, alteration, conversion, initiation, or modification of an existing hospital unless there is submitted in connection with the application for such building permit a current certificate of need issued by the state agency or a statement issued by the state agency that the existing hospital is not required to hold a certificate of need under this part."

SECTION 14. Section 323D-50, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(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 that has~~

~~been revoked under this section shall not be restored except by action of the department.~~]"

SECTION 15. 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 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 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 for any laboratory involving a total expenditure in excess of the expenditure minimum;

1 (3) Dispensaries and first aid stations located within
2 business or industrial establishments and maintained
3 solely for the use of employees; provided such
4 facilities do not regularly provide inpatient or
5 resident beds for patients or employees on a daily
6 twenty-four-hour basis;
7 (4) Dispensaries or infirmaries in correctional or
8 educational facilities;
9 (5) Dwelling establishments, such as hotels, motels, and
10 rooming or boarding houses that do not regularly
11 provide health care facilities or health care
12 services;
13 (6) Any home or institution conducted only for those who,
14 pursuant to the teachings, faith, or belief of any
15 group, depend for healing upon prayer or other
16 spiritual means;
17 (7) Dental clinics;
18 (8) Nonpatient areas of care facilities such as parking
19 garages and administrative offices;
20 (9) Bed changes that involve ten per cent or ten beds of
21 existing licensed bed types, whichever is less, of a

1 facility's total existing licensed beds within a two-
2 year period;
3 (10) Projects that are wholly dedicated to meeting
4 the state's obligations under court orders, including
5 consent decrees, that have already determined that
6 need for the projects exists;
7 (11) Replacement of existing equipment with its modern-day
8 equivalent;
9 (12) Primary care clinics under the expenditure thresholds
10 referenced in section 323D-2;
11 (13) Equipment and services related to that equipment, that
12 are primarily invented and used for research purposes
13 as opposed to usual and customary diagnostic and
14 therapeutic care;
15 (14) Capital expenditures that are required:
16 (A) To eliminate or prevent imminent safety hazards
17 as defined by federal, state, or county fire,
18 building, or life safety codes or regulations;
19 (B) To comply with state licensure standards;
20 (C) To comply with accreditation standards,
21 compliance with which is required to receive
22 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;

(15) Extended care adult residential care homes and assisted living facilities; [~~or~~]

(16) Acute psychiatric beds and acute or long-term swing beds as defined in administrative rules;

(17) Long-term psychiatric beds, long-term tuberculosis beds, long-term mental retardation beds, long-term hansen's disease beds, long-term children's orthopedics beds, long-term rehabilitation beds, skilled nursing facilities, intermediate care facilities, mental retardation facilities, special treatment facilities, and care homes, as defined in administrative rules;

(18) Outpatient clinics, ultrasound services, clinical laboratories, pharmacies, social services, home health agencies, drug rehabilitation centers, alcohol rehabilitation centers, recompression centers, mental health centers, family planning clinics, prenatal clinics, abortion clinics, fixed-wing ambulances, helicopter ambulances, comprehensive outpatient

1 rehabilitative facilities, chronic renal dialysis
2 centers, and hospices, as defined in administrative
3 rules; or
4 [~~16)~~] (19) Other facilities or services that the agency
5 through the statewide council chooses to exempt, by
6 rules pursuant to section 323D-62."
7 SECTION 16. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.
9 SECTION 17. This Act shall take effect upon its approval.
10
11 INTRODUCED BY: Calvin K.Y. Say
12 BY REQUEST
JAN 22 2008

H.B. NO. 3123

Report Title:
Health Care; Certificate of Need

Description:
Amends the current certificate of need requirement under chapter 323D, Hawaii Revised Statutes, to promote increased access to quality health care.

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JUSTIFICATION SHEET

DEPARTMENT: Office of the Governor

TITLE: A BILL FOR AN ACT RELATING TO ACCESS TO HEALTH CARE.

PURPOSE: To amend chapter 323D, Hawaii Revised Statutes, to emphasize that the primary objective and purpose of the State Health Planning and Development Agency (SHPDA) is to promote access to quality health care by encouraging existing health care providers to expand their businesses and by stimulating prospective health care providers to begin offering their services in Hawaii and to amend the current certificate of need ("CON") requirement under chapter 323D, Hawaii Revised Statutes to: (1) reverse the order in which the county and state councils hold hearings and make recommendations on CON applications (so that the county council hears the matter last) and provide that, where the recommendations of the State council and the county council conflict, the SHPDA Administrator shall give greater weight to the recommendation of the county council; (2) require that a hearing on a request for reconsideration from the denial of a CON be held on the island where the proposed medical facility is to be built or the medical service is to occur; (3) increase the expenditure minimums for capital expenditures and for new or replacement medical equipment; and (4) broaden the list of medical facilities and activities that are exempt from the CON requirement.

MEANS: Add a new section to chapter 323D and amend sections 323D-1, 323D-2, 323D-12, 323D-14, 323D-18, 323D-22(a), 323D-44.5, 323D-44.6, 323D-45, 323D-47, 323D-49, 323D-50(b), and 323D-54, Hawaii Revised Statutes.

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JUSTIFICATION: This bill amends chapter 323D, HRS, to emphasize the development responsibility of the SHPDA and to focus more time and resources on increasing access to quality health care within this State.

Currently, chapter 323D, HRS, mandates that health care providers must seek a CON from the SHPDA if they wish (1) to begin offering most types of health care services; (2) to end rendering most types of health care services; (3) to provide such services at a different location; or (4) to construct any type of medical or health facility.

Pursuant to Hawaii Administrative Rules (HAR) that were adopted by the SHPDA, HAR §11-186-6, any health care entity must obtain a CON from the SHPDA if the entity wishes to add or delete any of the following services and/or if the entity wishes to change the location at which it offers such services:

- Acute hospital bed services (including medical/surgical, obstetrical, pediatrics, acute/long term swing, neonatal intensive care, critical care, or psychiatric services);
- Long-term bed services (including psychiatric, rehabilitation, skilled nursing facility (SNF), intermediate care facility (ICF), children's orthopedics, rehabilitation, special treatment facility, care home facility, bed services for persons with Hansen's disease, tuberculosis, or mental retardation (MR), SNF/ICF, or ICF/MR);
- Special services (including renal dialysis, cardiac catheterization, burn center, neurosurgery burn center, heart surgery, transplant surgery, radiation therapy, and hospice);
- Outpatient clinics;
- Emergency rooms (including free-standing emergency care facilities);

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- Outpatient surgical centers;
- Diagnostic radiological centers (including computed tomography both stationary and mobile; and magnetic resonance imaging both stationary and mobile);
- Nuclear medicine;
- Ultrasound;
- Clinical laboratory;
- Pharmacy;
- Social services;
- Home health agency;
- Drug and/or alcohol rehabilitation or a comprehensive outpatient rehabilitation facility;
- Extracorporeal shock wave lithotripsy (ESWL)
- Recompression center;
- Mental health center;
- Family planning clinics, prenatal clinics, abortion clinics, or birthing centers; and
- Surface ambulance, fixed wing air ambulance, or helicopter air ambulance.

Hawaii as well as other states originally enacted CON statutes when federal law provided incentives for states with CON requirements. CON programs were developed in the 1960s and 1970s in an attempt to limit health care costs through federal and state regulation of the health care industry at a time when the primary funding method of health care was "fee for service."

In 1986, Congress repealed the federal law which provided for federal incentives for states to maintain CON programs.

Analysis of CON programs by the United States Federal Trade Commission, the United States Department of Justice, and other private experts have led to the following conclusions regarding CON programs:

- CON programs have failed to produce lower health care costs.

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- To the contrary, CON programs are anti-competitive and have acted as barriers to entry for health care providers, and have led to higher health care costs.
- CON programs have stifled innovation in health care delivery.
- CON programs lower the quality of care for patients, limit patient choice among health care providers, and reduce patient access among health care providers.

In addition, the health care industry has changed dramatically in the decades since the original adoption of the CON programs. First, the industry has kept down costs through other means, such as a shift to managed care. Second, changing demographics have led to greater demand for health care infrastructure. More health care capacity is needed (1) due to the aging of the "baby boom" generation; (2) because people are living longer; and (3) because innovation in the health care industry has led to greater treatment options and demand for access to these new medical technologies.

For the foregoing reasons, key states have repealed their CON statutes, including Arizona, California, Colorado, Idaho, Kansas, Minnesota, New Mexico, North Dakota, Pennsylvania, Indiana, South Dakota, Texas, Utah, and Wyoming. These repeals of CON statutes have occurred between 1983 and 1999. Other states, such as Florida, have amended their CON programs. Studies of these states that have repealed their CON requirements have revealed no substantial increase in health care costs.

Given the foregoing, this bill proposes the following revisions to chapter 323D, HRS:

I. <u>Reversing the order that the State and county councils consider a CON application, and giving greater weight to the county council's decision.</u>

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Particularly for the neighbor islands, the county council is in the best position to know of the medical needs of the county. Chapter 323D, HRS, is amended (1) to reverse the order that the State and county councils hold hearings on CON applications; and (2) to require that the SHPDA Administrator give greater weight to the county council's recommendation where it conflicts with the State council's recommendation.

The members of a county council, as residents of the county, are more knowledgeable as to the types of medical facilities and medical services that are needed for that county. In addition, because the county councils hold hearings on the island where the medical facility is to be built or medical service is to be rendered, more members of the public and other stakeholders have an opportunity to comment on the proposed medical facility/service.

II. Requiring that a hearing on a request for reconsideration from the denial of a CON be held on the island where the medical facility is to be built.

Where a CON for a new facility is denied, but a hearing on the applicant's request for reconsideration is granted, this proposal will amend chapter 323D, HRS, to require that the hearing be held on the island where the new facility/activity will be based. This revision is proposed for the same reasons as the revisions set forth above (e.g., it will allow more affected persons to testify; and the county council members will be more likely to be aware of the counties' need (or lack thereof) for health care providers/facilities).

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III. Narrowing the Scope of the CON requirement.

This bill expands the list of services and facilities that are exempt from the CON requirement under chapter 323D, HRS.

Impact on the public: Access to health care in Hawaii will be improved. Existing health care providers will be able to expand their operations more easily and more health care providers will be attracted to open businesses in this State.

Impact on the department and other agencies: By emphasizing the SHPDA's role as a developer of the State's health care capacity, the SHPDA will become more involved in enlarging the health care capacity in this State. Further, the revisions to the CON process will reduce the workload of the SHPDA, thus allowing SHPDA to focus on emergency care needs. The Department of Health would continue its oversight role of health facilities as the Department exercises now. Hawaii Health Systems Corporation would have additional opportunities to partner with health care providers.

GENERAL FUND: No direct impact on the general fund.

OTHER FUNDS: The amount in the State Health Planning and Development Special Fund will be reduced. Currently, the CON application fees are deposited into this special fund (HRS §323D-12.6).

PPBS PROGRAM DESIGNATION: None.

OTHER AFFECTED AGENCIES: Department of Health; State Health Planning and Development Agency; Statewide Health Coordinating Council; Honolulu Subarea Health Planning Council; West Oahu Subarea Health Planning Council; Windward Oahu

Subarea Health Planning Council; Hawaii County Subarea Health Planning Council; Kauai Subarea Health Planning Council; Tri-Isle Subarea Health Planning Council; Hawaii Health Systems Corporation; Review Panel.

EFFECTIVE DATE: Upon approval.