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# HOUSE CONCURRENT RESOLUTION

REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO CONDUCT A STUDY  
RELATING TO THE STATE'S AUTHORITY TO ALLOW COLLECTIVE  
NEGOTIATION BETWEEN PHYSICIANS AND HEALTH CARE INSURERS IN  
HAWAII TO RESTRAIN OR BALANCE THE MONOPSONISTIC MARKET  
POWER OF HEALTH CARE INSURERS OVER INDEPENDENT PHYSICIANS.

1           WHEREAS, the health care system in Hawaii is in crisis  
2 because there is a severe shortage of physicians in the State;  
3 and  
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5           WHEREAS, the gap between supply and demand for physicians  
6 in Hawaii continues to increase and has been exacerbated by the  
7 COVID-19 pandemic, according to the 2020 Physician Workforce  
8 Assessment Project conducted by the Area Health Education Center  
9 at the University of Hawaii at Manoa John A. Burns School of  
10 Medicine; and  
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12           WHEREAS, the Physician Workforce Assessment Project also  
13 reported an estimated shortage of one thousand eight physicians,  
14 with the neighbor islands being hardest hit; and  
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16           WHEREAS, the physician shortage in each county in 2020 was  
17 twenty percent on Oahu, compared with fifty-three percent for  
18 Hawaii island, forty-two percent for Maui County, and thirty-  
19 three percent for Kauai; and  
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21           WHEREAS, the physician shortage is due to the State's  
22 increasing inability to recruit and retain physicians, and poses  
23 a serious problem for Hawaii residents because it prevents  
24 timely and appropriate access to life-saving health care; and  
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26           WHEREAS, according to the John A. Burns School of Medicine,  
27 in 2020, many physicians elected to retire or decrease their



1 practicing hours because of the COVID-19 pandemic, further  
2 worsening the State's physician shortage crisis; and

3  
4 WHEREAS, a primary barrier to recruiting and retaining  
5 physicians is the fact that physician compensation in Hawaii is  
6 relatively low and not competitive nationally, as evidenced by  
7 Hawaii's inability to attract qualified out-of-state physicians  
8 or to retain graduates from the John A. Burns School of Medicine  
9 in Honolulu; and

10  
11 WHEREAS, a major factor in the relatively low compensation  
12 for Hawaii's physicians is the State's highly concentrated  
13 health insurance market; and

14  
15 WHEREAS, a 2019 examination of the Hawaii insurance market  
16 by the American Medical Association entitled "Competition in  
17 Health Insurance: A Comprehensive Study of U.S. Markets",  
18 reveals a highly concentrated total insurance market in Hawaii,  
19 with a single insurer controlling sixty-seven percent of the  
20 total market, and its second largest insurer controlling twenty-  
21 one percent; and

22  
23 WHEREAS, the American Medical Association ranked Hawaii to  
24 be the third least competitive health insurance market in the  
25 nation, behind only Alabama and Louisiana; and

26  
27 WHEREAS, highly concentrated health insurance markets are  
28 said to cause disparate, imbalanced, and monopsonistic market  
29 power between insurers and the independent physicians providing  
30 health care services; and

31  
32 WHEREAS, in addition to market concentration, the  
33 relatively weak bargaining power of physicians compared to  
34 health insurers is also a result of federal antitrust law, which  
35 generally bars physicians from collectively negotiating their  
36 contracts with insurers, and contributes to the monopsonistic  
37 market favoring insurers; and

38  
39 WHEREAS, independent physicians contend that such monopsony  
40 power enables health plans to approach contract negotiations  
41 with a "take-it-or-leave-it" attitude that puts physicians in



1 the untenable position of accepting inappropriate and adhesive  
2 contract terms; and

3  
4 WHEREAS, in *Parker v. Brown*, 317 U.S. 341 (1943), the  
5 United States Supreme Court created an exemption to federal  
6 antitrust laws, referred to as state action immunity or the  
7 Parker immunity doctrine, which authorized state actions that  
8 could foreseeably cause anti-competitive effects when taken  
9 pursuant to a clearly expressed and legislatively adopted state  
10 policy; and

11  
12 WHEREAS, in 2009, the Alaska Legislature found that  
13 permitting physicians to engage in collective negotiation of  
14 contracts with health benefit plans is appropriate and necessary  
15 to benefit competition in the health care market, and enacted a  
16 law consistent with the Parker immunity doctrine to authorize  
17 collective negotiations between competing physicians and health  
18 benefit plans; and

19  
20 WHEREAS, it is appropriate and necessary for Hawaii to  
21 consider authorizing physicians to collectively negotiate their  
22 contracts with health benefit plans to address the physician  
23 shortage crisis in the State; now, therefore,

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25 BE IT RESOLVED by the House of Representatives of the  
26 Thirty-first Legislature of the State of Hawaii, Regular Session  
27 of 2021, the Senate concurring, that the Legislative Reference  
28 Bureau is requested to conduct a study relating to the State's  
29 authority to allow collective negotiation between physicians and  
30 health care insurers in Hawaii to restrain or balance the  
31 monopsonistic market power of health care insurers over  
32 independent physicians; and

33  
34 BE IT FURTHER RESOLVED that the study is requested to  
35 include an examination of the Parker immunity doctrine and its  
36 current legal status and the extent of any statutory or policy  
37 implementation by other states relating to collective  
38 negotiation by physicians; and

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40 BE IT FURTHER RESOLVED that the Legislative Reference  
41 Bureau is requested to submit a report of its findings and  
42 recommendations, including any proposed legislation to allow



1 collective negotiation between physicians and health care  
2 insurers in Hawaii, to the Legislature no later than twenty days  
3 prior to the convening of the Regular Session of 2022; and  
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5 BE IT FURTHER RESOLVED that a certified copy of this  
6 Concurrent Resolution be transmitted to the Director of the  
7 Legislative Reference Bureau.

