

MAR 12 2021

SENATE 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, a primary barrier to recruiting and retaining
27 physicians is the fact that physician compensation in Hawaii is
28 relatively low and not competitive nationally, as evidenced by



1 Hawaii's inability to attract qualified out-of-state physicians
2 or to retain graduates from the John A. Burns School of Medicine
3 in Honolulu; and

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5 WHEREAS, a major factor in the relatively low compensation
6 for Hawaii's physicians is the State's highly concentrated
7 health insurance market; and

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

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17 WHEREAS, the American Medical Association ranked Hawaii to
18 be the third least competitive health insurance market in the
19 nation, behind only Alabama and Louisiana; and

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21 WHEREAS, highly concentrated health insurance markets are
22 said to cause disparate, imbalanced, and monopsonistic market
23 power between insurers and the independent physicians providing
24 health care services; and

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26 WHEREAS, in addition to market concentration, the
27 relatively weak bargaining power of physicians compared to
28 health insurers is also a result of federal antitrust law, which
29 generally bars physicians from collectively negotiating their
30 contracts with insurers, and contributes to the monopsonistic
31 market favoring insurers; and

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33 WHEREAS, independent physicians contend that such monopsony
34 power enables health plans to approach contract negotiations
35 with a "take-it-or-leave-it" attitude that puts physicians in
36 the untenable position of accepting inappropriate and adhesive
37 contract terms; and

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39 WHEREAS, in *Parker v. Brown*, 317 U.S. 341 (1943), the
40 United States Supreme Court created an exemption to federal
41 antitrust laws referred to as state action immunity or the
42 Parker immunity doctrine, which authorized state actions that



1 could foreseeably cause anti-competitive effects when taken
2 pursuant to a clearly expressed and legislatively adopted state
3 policy; and

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5 WHEREAS, in 2009, the Alaska Legislature found that
6 permitting physicians to engage in collective negotiation of
7 contracts with health benefit plans is appropriate and necessary
8 to benefit competition in the health care market, and enacted a
9 law consistent with the Parker immunity doctrine to authorize
10 collective negotiations between competing physicians and health
11 benefit plans; and

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13 WHEREAS, it is appropriate and necessary for Hawaii to
14 consider authorizing physicians to collectively negotiate their
15 contracts with health benefit plans to address the physician
16 shortage crisis in the State; now, therefore,

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18 BE IT RESOLVED by the Senate of the Thirty-first
19 Legislature of the State of Hawaii, Regular Session of 2021, the
20 House of Representatives concurring, that the Legislative
21 Reference Bureau is requested to conduct a study relating to the
22 State's authority to allow collective negotiation between
23 physicians and health care insurers in Hawaii to restrain or
24 balance the monopsonistic market power of health care insurers
25 over independent physicians; and

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27 BE IT FURTHER RESOLVED that the study is requested to
28 include an examination of the Alaska law authorizing collective
29 negotiation by physicians, the Parker immunity doctrine and its
30 current legal status, the extent of any statutory or policy
31 implementation by other states relating to collective
32 negotiation by physicians, and whether and how enacting a law
33 similar to Alaska's law on collective negotiation by physicians
34 would impact the State's Prepaid Health Care Act exemption from
35 the federal Employee Retirement Income Security Act of 1974; and

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37 BE IT FURTHER RESOLVED that the Legislative Reference
38 Bureau is requested to submit a report of its findings and
39 recommendations, including any proposed legislation to allow
40 collective negotiation between physicians and health care
41 insurers in Hawaii, to the Legislature no later than twenty days
42 prior to the convening of the Regular Session of 2022; and



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1 BE IT FURTHER RESOLVED that certified copies of this
2 Concurrent Resolution be transmitted to the Senate President,
3 Speaker of the House of Representatives, and Director of the
4 Legislative Reference Bureau.

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OFFERED BY: 

