
HOUSE CONCURRENT RESOLUTION

URGING THE UNITED STATES TRADE REPRESENTATIVE TO PURSUE THE
INSERTION OF AN INTERPRETIVE NOTE IN THE UNITED STATES-
AUSTRALIA FREE TRADE AGREEMENT TO CLARIFY THAT MEDICAID AND
PHARMACEUTICAL ASSISTANCE PROGRAMS UNDER THE MEDICARE
MODERNIZATION ACT ARE NOT INCLUDED IN THE AGREEMENT.

1 WHEREAS, Hawaii continues to strive to ensure that
2 healthcare is available to all residents of the State; and
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4 WHEREAS, managing healthcare costs is an essential
5 component of the State's efforts to ensure continued access to a
6 broad range of healthcare services; and
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8 WHEREAS, the Congressional Budget Office found that the
9 growth in prescription drug costs has outpaced every other
10 category of health expenditure; and
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12 WHEREAS, Hawaii has joined other states in the forefront in
13 developing innovative solutions to combat the steep increase in
14 prescription drug costs by taking steps to limit patent abuse,
15 expand access to affordable prescription drugs, and implement
16 cost containment strategies; and
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18 WHEREAS, recent state and federal court decisions have
19 reaffirmed the ability of states to adopt policies designed to
20 manage prescription drug costs; and
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22 WHEREAS, the language contained in the United States-
23 Australia Free Trade Agreement, including Annex 2-C relating to
24 pharmaceuticals, is ambiguous and could be interpreted by a
25 dispute resolution panel to promote an overtly liberalized
26 market that maximizes innovation in place of Hawaii's interests
27 in promoting cost containment of prescription drugs; and



1 WHEREAS, the United States Trade Representative (Trade
2 Representative) has assured states in writing that state
3 programs are not covered by recent trade agreements signed by
4 the United States; and

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6 WHEREAS, the written assurance is not a legally binding
7 agreement in the case of a complaint filed by a United States
8 trading partner regarding the state administration of healthcare
9 programs; and

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11 WHEREAS, all trade agreements with the United States are
12 open to an exchange of interpretive notes through which a party
13 to the agreement can clarify the scope of a provision of the
14 trade agreement or annex to the agreement; and

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16 WHEREAS, these interpretive notes have the force of
17 international law; now, therefore,

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19 BE IT RESOLVED by the House of Representatives of the
20 Twenty-third Legislature of the State of Hawaii, Regular Session
21 of 2006, the Senate concurring, that the Legislature urges the
22 Trade Representative, in consultation with the states, to pursue
23 the exchange of an interpretive note with Australia to clarify
24 that the state and local administration of Medicaid programs and
25 pharmaceutical assistance programs under the Medicare
26 Modernization Act are not included in the definition of "federal
27 healthcare program" under Annex 2-C of the United States-
28 Australia Free Trade Agreement; and

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30 BE IT FURTHER RESOLVED that the Trade Representative is
31 also urged to:

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33 (1) Engage in discussion with the Hawaii State House of
34 Representatives and Department of Health officials to
35 determine which healthcare programs are covered by the
36 Annex 2-C definition of "federal healthcare program";
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38 (2) Carve out and protect the state administration of
39 healthcare programs, including the purchase of
40 prescription drugs, in all current and future
41 negotiations of trade agreements;



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- (3) Respond to states' requests for support in building local capacity to understand the implications of international trade agreements relating to health; and
- (4) Achieve a more coherent policy on all levels of government by consulting with states on the implications of state laws and lawmaking authority before committing to trade provisions that directly affect the state's authority;

and

BE IT FURTHER RESOLVED that certified copies of this Concurrent Resolution be transmitted to the President of the United States, Speaker of the United States House of Representatives, President of the United States Senate, United States Trade Representative, members of Hawaii's Congressional delegation, and the Director of Health.

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