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Subject: *Submitted testimony for HCR9 on Feb 26, 2016 10:00AM*

HCR9

Submitted on: 2/25/2016

Testimony for HLT on Feb 26, 2016 10:00AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Christopher D. Flanders, D.O.	Hawaii Medical Association	Support	No

Comments:

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February 26, 2016
10:00 AM
Conference Room 329

To: House Committee on Health
Rep. Della Au Belatti, Chair
Rep. Richard P. Creagan, Vice Chair

From: Grassroot Institute of Hawaii
President Keli'i Akina, Ph.D.

RE: HR3 & HCR9 – REQUESTING THE AUDITOR TO CONDUCT A STUDY OF THE RELEVANCY OF THE CERTIFICATE OF NEED PROCESS
Comments Only

Dear Chair and Committee Members:

The Grassroot Institute of Hawaii would like to offer its comments on HCR 9 and HR 3, which request the state auditor to study Hawaii's Certificate of Need (CON) process, with a special focus on the effect of existing law on health care costs and accessibility.

As the wording of the resolution itself notes, Hawaii's CON law is more than 40 years old, and was crafted in response to a federal mandate and funding that was repealed more than 25 years ago. In that time, health care in this state has changed dramatically, in ways that make it essential to reconsider the CON law.

In theory, CON laws prevent inflation of health care costs by limiting the duplication of facilities and encouraging consolidation among providers. In practice, however, they have served to throttle innovation and discourage competition—the very thing that is most effective in limiting rising costs. Moreover, they have been especially destructive for rural communities, a serious

concern for a state like Hawaii, where ensuring health care access on outer islands creates a similar challenge.

A study of North Carolina’s CON law found that the burden of the restrictions fell most heavily on the poor, elderly, and those requiring emergency care.¹ In that state, not only did the CON law suppress the building of hospitals, leaving most of the state’s counties with only one hospital, but denied a breast cancer hospital permission to buy an MRI machine and rejected a plea from an orthopedic clinic to build more operating rooms. It’s an absurdity to say that a medical practice cannot buy equipment or expand facilities with its own money to serve its patients because similar facilities exist a few hours away.

Lawsuits challenging CON laws have exposed the laws’ tendency to encourage cronyism and discourage competition, and courts have begun to respond to this use of regulation in service of commercial interests.² It is generally agreed that even in the best circumstances, CON laws dramatically add to the health care bureaucracy and can result in hospital shortages when the bureaucracies that apply them focus on expenditure control.

Fourteen states have repealed their CON laws, though many maintain some level of regulatory oversight regarding costs and duplication of services. Repealing the law, however has been shown to have a positive effect, as in Pennsylvania, where a 2009 study from the Bureau of Economic Research found that repealing the state’s CON law resulted in a dramatic improvement in cardiac surgery by providing better access to treatment.³

The state has been making great strides towards improving health care access—especially on the outer islands—by questioning previous assumptions on the role of the state in the market. An honest examination of Hawaii’s CON law is badly needed if we want to continue that progress.

Thank you for the opportunity to submit our comments.

Sincerely,

Keli’i Akina, Ph.D.

President, Grassroot Institute of Hawaii

¹ Matthew Ganz. “Research & Commentary: Certificate of Need Laws.” (Dec. 27, 2013) Available at <https://www.heartland.org/policy-documents/research-commentary-certificate-need-laws>

² Ilya Shapiro. “You Shouldn’t Have to Ask Your Competitors for Permission to Start a Business.” (Aug. 20, 2013). Available at <http://www.cato.org/blog/you-shouldnt-have-ask-competitors-permission-start-business>

³ Heartland Foundation. “Certificate of Need Law Hampers North Carolina Hospital.” Available at <http://news.heartland.org/newspaper-article/certificate-need-law-hampers-north-carolina-breast-cancer-hospital>