
HOUSE RESOLUTION

REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO CONDUCT A STUDY
ON THE PHYSICIAN WORKFORCE SHORTAGE IN HAWAII BY ANALYZING
THE PARKER IMMUNITY DOCTRINE AND THE FEASIBILITY OF
ENACTING STATUTORY AUTHORITY FOR COLLECTIVE NEGOTIATION
BETWEEN PHYSICIANS AND HEALTH CARE INSURERS IN THE STATE.

1 WHEREAS, the healthcare system in Hawaii is in crisis
2 because of the severe shortage of physicians in the State; and
3

4 WHEREAS, according to the recent Hawaii Physician Workforce
5 Assessment Project study conducted in 2020 by the Area Health
6 Education Center of Hawaii at the University of Hawaii, the gap
7 between supply and demand for doctors in Hawaii has grown by
8 sixty-five percent since 2010; and
9

10 WHEREAS, the biannual Hawaii Physician Workforce Assessment
11 Project study also reported a current shortage of eight hundred
12 twenty physicians statewide, with the neighbor islands hardest
13 affected; and
14

15 WHEREAS, there is a physician shortfall of sixteen percent
16 on Oahu, compared with a forty-four percent shortfall for the
17 island of Hawaii, thirty-six percent for Maui County, and
18 thirty-two percent for the island of Kauai; and
19

20 WHEREAS, the physician shortage is due to the State's
21 increasing inability to recruit and retain physicians, which
22 poses a serious problem for Hawaii residents as the shortage
23 prevents timely and appropriate access to life-saving
24 healthcare; and
25

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
29 Hawaii's inability to attract qualified out-of-state physicians



1 or retain graduates from the John A. Burns School of Medicine
2 located in Honolulu, Hawaii; and

3
4 WHEREAS, a major factor in the relatively low compensation
5 for Hawaii's physicians is the State's highly concentrated
6 health insurance market; and

7
8 WHEREAS, an examination of the Hawaii insurance market by
9 the American Medical Association entitled *Competition in Health*
10 *Insurance: A Comprehensive Study of U.S. Markets* (2019) reveals
11 a highly concentrated total insurance market, with a single
12 insurer controlling sixty-seven percent of the total market and
13 its second-largest insurer controlling twenty-one percent; and

14
15 WHEREAS, the American Medical Association ranked Hawaii the
16 third least competitive health insurance market in the nation,
17 behind only Alabama and Louisiana; and

18
19 WHEREAS, highly concentrated health insurance markets are
20 said to cause disparate, imbalanced, and monopsonistic market
21 power between insurers and independent physicians providing
22 health care services; and

23
24 WHEREAS, in addition to market concentration, the
25 relatively weak bargaining power of physicians compared to
26 health insurers is also a result of federal antitrust law, which
27 generally bars physicians from collectively negotiating their
28 contracts with insurers and contributes to the monopsonistic
29 market favoring insurers; and

30
31 WHEREAS, independent physicians contend that monopsony
32 power enables health plans to approach contract negotiations
33 with a "take-it-or-leave-it" attitude that puts physicians in
34 the untenable position of accepting inappropriate and adhesive
35 contract terms; and

36
37 WHEREAS, in *Parker v. Brown*, 317 U.S. 341 (1943), the
38 United States Supreme Court created an exemption to the federal
39 antitrust laws referred to as the State Action Doctrine or the
40 Parker Immunity Doctrine, and authorized state actions that
41 could foreseeably cause anti-competitive effects when taken



1 pursuant to a clearly expressed and legislatively adopted state
2 policy; and
3

4 WHEREAS, in 2009, the Alaska Legislature found that
5 permitting physicians to engage in collective negotiation of
6 contracts with health benefit plans to be appropriate and
7 necessary to benefit competition in the healthcare market, and
8 adopted a statute consistent with the Parker Immunity Doctrine
9 to authorize collective negotiations between competing
10 physicians and health benefit plans; and
11

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

17 BE IT RESOLVED by the House of Representatives of the
18 Thirtieth Legislature of the State of Hawaii, Regular Session of
19 2020, that the Legislative Reference Bureau is requested to
20 conduct a study on the physician workforce shortage in Hawaii by
21 analyzing the Parker Immunity Doctrine, including its current
22 legal status and the extent of any statutory or policy
23 implementation by other states, and the feasibility of enacting
24 statutory authority for collective negotiation between
25 physicians and health care insurers in the State; and
26

27 BE IT FURTHER RESOLVED that the Legislative Reference
28 Bureau is requested to submit a report of its findings and
29 recommendations, including any proposed legislation, to the
30 Legislature no later than twenty days prior to the convening of
31 the Regular Session of 2021; and
32

33 BE IT FURTHER RESOLVED that certified copies of this
34 Resolution be transmitted to the President of the Senate,
35 Speaker of the House of Representatives, and Director of the
36 Legislative Reference Bureau.
37
38
39

OFFERED BY: 

MAR 06 2020

