

MAR 06 2020

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# SENATE CONCURRENT RESOLUTION

REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO CONDUCT A STUDY ON THE FEASIBILITY OF ENACTING STATUTORY AUTHORITY FOR COLLECTIVE NEGOTIATION BETWEEN PHYSICIANS AND HEALTH CARE INSURERS IN HAWAII TO RESTRAIN OR BALANCE THE MONOPSONISTIC MARKET POWER OF HEALTHCARE 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  
4

5           WHEREAS, the gap between supply and demand for doctors in  
6 Hawaii has grown by sixty-five percent since 2010, according to  
7 the recent Physician Workforce Assessment Study conducted in  
8 2020 by the Area Health Education Center of Hawaii at the  
9 University of Hawaii; and  
10

11           WHEREAS, the biannual Physician Workforce Assessment Study  
12 also reported an estimated shortage of eight hundred twenty  
13 physicians with the neighbor islands being hardest hit; and  
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15           WHEREAS, there is a physician shortfall of sixteen percent  
16 on Oahu, compared with a forty-four percent shortfall for Hawaii  
17 island, thirty-six percent for Maui County, and thirty-two  
18 percent for Kauai; and  
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20           WHEREAS, the physician shortage is due to the State's  
21 increasing inability to recruit and retain physicians, and poses  
22 a serious problem for Hawaii residents because it prevents  
23 timely and appropriate access to life-saving healthcare; and  
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25           WHEREAS, a primary barrier to recruiting and retaining  
26 physicians is the fact that physician compensation in Hawaii is  
27 relatively low and not competitive nationally, as evidenced by  
28 Hawaii's inability to attract qualified out-of-state physicians



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

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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 (AMA) entitled "Competition in  
10 Health Insurance: A Comprehensive Study of U.S. Markets"  
11 (2019), reveals a highly concentrated total insurance market,  
12 with a single insurer controlling sixty-seven percent of the  
13 total market, and its second largest insurer controlling twenty-  
14 one percent; and

15  
16 WHEREAS, the AMA ranked Hawaii to be the third least  
17 competitive health insurance market in the nation, behind only  
18 Alabama and Louisiana; and

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

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

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

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



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1 pursuant to a clearly expressed and legislatively adopted state  
2 policy; and  
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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 health care 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 of  
13 Hawaii to consider authorizing physicians to collectively  
14 negotiate their contracts with health benefit plans to address  
15 the physician shortage crisis in Hawaii; now, therefore,  
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17 BE IT RESOLVED by the Senate of the Thirtieth Legislature  
18 of the State of Hawaii, Regular Session of 2020, the House of  
19 Representatives concurring, that the Legislative Reference  
20 Bureau is requested to conduct a study of the Alaska  
21 Legislation, the Parker Immunity Doctrine and its current legal  
22 status, the extent of any statutory or policy implementation by  
23 other states, and the feasibility of enacting a statutory  
24 authority compliant with the Parker Immunity Doctrine to allow  
25 collective negotiation between physicians and health care  
26 insurers in Hawaii; and  
27

28 BE IT FURTHER RESOLVED that the Legislative Reference  
29 Bureau is requested to submit a report of its findings and  
30 conclusions, including any recommended legislation, to the  
31 Legislature no later than twenty days prior to the convening of  
32 the Regular Session of 2021; and  
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34 BE IT FURTHER RESOLVED that certified copies of this  
35 Concurrent Resolution be transmitted to the President of the  
36 Senate, Speaker of the House of Representatives, and Director of  
37 the Legislative Reference Bureau.  
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OFFERED BY: 

