
SENATE CONCURRENT RESOLUTION

REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO CONDUCT A STUDY
RELATING TO STATUTORY AUTHORITY TO ALLOW 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
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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
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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



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

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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

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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

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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

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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

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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

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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



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 is appropriate and necessary
7 to benefit competition in the health care market, and adopted a
8 statute consistent with the Parker Immunity Doctrine to
9 authorize collective negotiations between competing physicians
10 and health benefit plans; and

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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 whether and how enacting a statute similar to
24 Alaska legislation would impact the exemption of the State's
25 Prepaid Health Care Act from the federal Employee Retirement
26 Income Security Act of 1974; and

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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 allow
31 collective negotiation between physicians and health care
32 insurers in Hawaii, to the Legislature no later than twenty days
33 prior to the convening of the Regular Session of 2021; and

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

