



STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

DAVID Y. IGE
GOVERNOR OF HAWAII

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House Committee on Health

HB 2502, Relating to Health

Testimony of Serafin Colmenares, Jr. Acting SHPDA Administrator

Thursday, January 30, 2020
9:00 a.m., Conference Room 329

1 **Agency's Position:** The State Health Planning and Development Agency is providing
2 comments on H.B. 2502.

3 **Fiscal Implications:** None

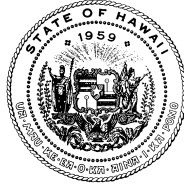
4 **Purpose and Justification:** To grant an existing hospital or dialysis facility in a rural subarea
5 a right of first refusal to expand its existing facilities or services if a competing entity files a
6 certificate of need to establish a new hospital or dialysis facility in the same rural area.

7 Currently, the certificate of need program, through its rules, already addresses the issue
8 of the need for expanded healthcare services in rural areas while protecting the viability and
9 quality of the existing healthcare system of the area. Therefore, the proposed bill is not
10 necessary. Specifically, HAR 11-186-15, provides that certificate of need applicants must not
11 only demonstrate the need for the proposed service (HAR 11-186-15(a)(1), but also that their
12 proposal will not negatively affect the existing healthcare system of the area (HAR 11-186-
13 15(a)(10). The impact that a proposed new service will have on the existing healthcare system
14 of the area, in HAR 11-186-15(a)(10), takes into account both the viability of the existing
15 providers, as well as the quality of their existing services.

1 In addition, there are technical issues with the proposed bill that would create ambiguity
2 in the right of first refusal process in the bill's definition of "Hospital". H.B. 2502 defines a
3 "Hospital" as "an entity licensed as a hospital by the department of health pursuant to section
4 321-14.5", however, "hospital" or "hospital services" are not on the list of services in the
5 certificate of need program rules that require a certificate of need. HAR 11-186-5 contains a
6 list of multiple services that a given hospital may or may not provide, such as: Acute Care
7 Beds, Diagnostic Radiology (x-ray), Radiation Therapy, Cardiac Catheterization, Outpatient
8 Surgery, MRI, CT and others. Therefore, it is not clear in H.B. 2502 the extent to which, if any,
9 proposed new health care providers would be subject to the right of first refusal. Also, H.B.
10 2502 defines a "Dialysis facility" as "an entity licensed by the department of health to provide
11 dialysis services", however, currently there is no state licensure program for dialysis providers.

12 Thank you for this opportunity to testify.

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LATE

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Testimony COMMENTING on H.B. 2502
RELATING TO HEALTH.

REPRESENTATIVE JOHN M. MIZUNO, CHAIR
HOUSE COMMITTEE ON HEALTH

Hearing Date: Thursday, January 30, 2020 Room Number: 329

1 **Fiscal Implications:** None.

2 **Department Testimony:** The Department of Health defers to the State Health Planning and
3 Development Agency (SHPDA) on whether changes to the certificate of need process is needed.
4 However, the Department of Health offers the following comments in the event the House
5 Committee on Health decides to pass this bill.

6 The Department of Health's Office of Health Care Assurance (OHCA) performs federal
7 certification of dialysis facilities on behalf of the U.S. Centers for Medicare and Medicaid
8 Services (CMS). Currently, there is no required state licensure program for dialysis providers.
9 Therefore, as a result, the definition of a dialysis facility as contained in this bill should be
10 revised to avoid confusion.


11 **Offered Amendments:** Page 6, line 17 and 18, should be replaced with "Dialysis facility"
12 means an entity licensed by the department of health or certified by the department of health on
13 behalf of the U.S. Centers for Medicare and Medicaid services to provide dialysis services.

14 Thank you for the opportunity to provide comments on this bill.



THE QUEEN'S HEALTH SYSTEMS

To: The Honorable John M. Mizuno, Chair
The Honorable Bertrand Kobayashi, Vice Chair
Members, Committee on Health

From: 
Paula Yoshioka, Vice President, Government Relations & External Affairs, The Queen's
Health Systems
Colette Masunaga, Manager, Government Relations & External Affairs, The Queen's
Health Systems

Date: January 28, 2020

Hrg: House Committee on Health Hearing; Thursday, January 30, 2020 at 9 AM in Room 329

Re: **Comments on H.B. 2502, Relating to Health**

The Queen's Health Systems (Queen's) is a not-for-profit corporation that provides expanded health care capabilities to the people of Hawai'i and the Pacific Basin. Since the founding of the first Queen's hospital in 1859 by Queen Emma and King Kamehameha IV, it has been our mission to provide quality health care services in perpetuity for Native Hawaiians and all of the people of Hawai'i. Over the years, the organization has grown to four hospitals, 66 health care centers and labs, and more than 1,600 physicians statewide. As the preeminent health care system in Hawai'i, Queen's strives to provide superior patient care that is constantly advancing through education and research.

Queen's appreciates the opportunity to offer comments with concerns on H.B. 2502, Relating to Health. This measure would require the State Health Planning and Development Agency (SHPDA) to grant an existing hospital or dialysis facility in a rural subarea a right of first refusal to expand its existing facilities or services if a competing entity files a certificate of need (CON) application to establish a new facility in the same area.

HB 2502 poses serious concerns about circumventing the CON process that prevents over commercialization of medical services in Hawaii. Whether rural or urban, the intent of the CON process is to ensure there is a qualitative review of community need and that the proposed solution ensures access for all patients.

The bill as written limits the 'first right' to dialysis facilities and hospitals, which creates a monopoly, excludes competition and potentially limits patients to access of care. The Queen's North Hawaii Community Hospital and Molokai General Hospital serve our rural communities on the Big Island and Molokai. Queen's understands the workforce challenges in recruiting and retaining qualified healthcare professionals who serve our rural and hard to reach communities. However, despite these challenges, limiting access is not in the community's or patients' best interest.

Thank you for the opportunity to testify on this measure.

The mission of The Queen's Health Systems is to fulfill the intent of Queen Emma and King Kamehameha IV to provide in perpetuity quality health care services to improve the well-being of Native Hawaiians and all of the people of Hawai'i.



HAWAII TEAMSTERS & ALLIED WORKERS LOCAL 996

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Testimony to the House Committee on Health

Wednesday, January 30, 2020 9.00 a.m.
Conference Room 329, State Capitol

RE: House Bill 550 – Relating to Health

Chair Mizuno, Vice-Chair Kobayashi and members of the Committee on Health,

The Hawaii Teamsters and Allied Workers Union, Local 996 which represents more than 7,000 members statewide stands in SUPPORT of HB2502.

Hawaii Teamsters which represents about 2,000 members who work in hospitals, dialysis centers, and patient care facilities believes that Bill 2502 will help to sustain the quality of care by implementing safeguards to ensure that these facilities be adequately staffed. Across the nation there is a shortage of healthcare workers and here in Hawaii the need is greater. Our members have sacrificed their themselves to meet the increasing needs of patient care. To ensure the health and welfare of our members who provide care, receive care and live in these rural communities, we ask that you consider HB2502 to put quality of care over profits.

Thank you for your opportunity to testify.

Cody Sula
Hawaii Teamsters, Local 996
Government Affairs Liaison

WAYNE K.S. KAULULAAU
President/Principal Officer

RYAN YOSHIDA
Secretary – Treasurer

FREDERICK LIVA
Vice President

ANTHONY “BULLY” BADAYOS
Recording Secretary

WENDY NAILE
Trustee

JAMES “KIMO” LAROYA JR.
Trustee

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**Testimony to the House Committee on Health
Thursday, January 30, 2020; 9:00 a.m.
State Capitol, Conference Room 329**

RE: HOUSE BILL NO. 2502, RELATING TO HEALTH.

Chair Mizuno, Vice Chair Kobayashi, and Members of the Joint Committee:

The Hawaii Primary Care Association (HPCA) is a 501(c)(3) organization established to advocate for, expand access to, and sustain high quality care through the statewide network of Community Health Centers throughout the State of Hawaii. The HPCA offers **COMMENTS** on House Bill No. 2502, RELATING TO HEALTH.

The bill, as received by your Committee, would provide existing hospitals and dialysis facilities in rural communities with the right of first refusal to internally expand their facilities to address the needs of their communities prior to issuing a certificate of need to an applicant seeking to open a new hospital or dialysis facility in the same rural subareas.

By way of background, the HPCA represents Hawaii Federally-Qualified Health Centers (FQHCs). FQHCs provide desperately needed medical services at the frontlines in rural and underserved communities. Long considered champions for creating a more sustainable, integrated, and wellness-oriented system of health, FQHCs provide a more efficient, more effective and more comprehensive system of healthcare.

Chapter 323D, Hawaii Revised Statutes (HRS), the Health Planning and Resources Development and Health Care Cost Control Law, was enacted to promote accessibility for all the people of the State to quality health care services at reasonable costs. [**See**, Section 323D-1, HRS.]. Among other things, this law establishes the State Health Planning and Development Agency (**See**, Section 323D-11, HRS.), Subarea Health Planning Councils [**See**, Chapter 323D, Part III, HRS.] and a certificate of need process that is intended to ensure that any new facility or expansion of an existing facility be evaluated on its probable impact on health care costs. [**See**, Section 323D-44, HRS.]

This law makes explicit that:

". . . No person, public or private, nonprofit or for profit, shall:

- (1) Construct, expand, alter, convert, develop, initiate, or modify a health care facility or health care services in the State that requires a total capital expenditure in excess of the expenditure minimum;*
- (2) Substantially modify or increase the scope or type of health service rendered; or*
- (3) Increase, decrease, or change the class of usage of the bed complement of a health care facility or relocate beds from one physical facility or site to another;*

unless a certificate of need therefor has first been issued by the state agency."

[See, Section 323D-43, HRS.]

The HPCA asserts that Chapter 323D, HRS, is sound public policy because it requires the State to evaluate the need for health care within an area based on the financial impact to residents and communities. We question, however, whether the provision of a property right to existing hospitals and dialysis facilities (i.e., right of first refusal) will make it more difficult for investors and developers to consider entering into underserved areas. This might actually hamper or prevent the expansion of services within underserved communities.

The HPCA also questions why the right of first refusal would be provided only to hospitals and dialysis facilities. Our member FQHCs also provide essential primary care in rural areas. If the intent of this bill is to protect the health care professionals of existing facilities in rural areas, shouldn't this protection also be offered to all existing health care facilities in these areas? If not this measure might unintentionally allow existing hospitals and dialysis facilities to "poach" on staff who were trained by these other health care facilities and make it harder for them to provide desperately needed services to the underserved.

For example, Koolauloa Health Center is situated adjacent to Kahuku Hospital. If Koolauloa Health Center applied for a certificate of need to expand their campus, Kahuku Hospital could exercise their right of first refusal to block their application. Expansion would then occur at Kahuku Hospital. Seeking employees to meet this expansion, staff from Koolauloa Health Center might be solicited to leave and join Kahuku Hospital's team.

In this scenario, it will become more difficult for Koolauloa Health Center to compete with existing hospitals and dialysis facilities.

If this leads to the closure of the FQHC, are the need of the community truly met?

Testimony on House Bill No. 2502

Thursday, January 30, 2020; 9:00 a.m.

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While we are not opposed to this bill at this time, we are very concerned that the enactment of this measure will directly impact our member FQHCs, our employees, and our patients.

This Committee may want to consider expanding the facilities provided the right of first refusal. Yet, including all existing facilities within rural areas will undoubtedly increase the complexity of implementing this law.

For these reasons, we caution this Committee and urge their careful consideration of the policy implications that this bill will have.

Thank you for the opportunity to testify. Should you have any questions, please do not hesitate to contact Public Affairs and Policy Director Erik K. Abe at 536-8442, or eabe@hawaiiipca.net.

Testimony of
Jonathan Ching
Government Relations Manager



Before:
House Committee on Health
The Honorable John H. Mizuno, Chair
The Honorable Bertrand Kobayashi, Vice Chair

January 30, 2020
9:00 a.m.
Conference Room 329

Re: HB2502, Relating to Health

Chair Mizuno, Vice-Chair Kobayashi, and committee members, thank you for this opportunity to provide testimony on HB2502, which requires the State Health Planning and Development Agency to grant an existing hospital or dialysis facility in a rural subarea a right of first refusal to expand its existing facilities or services if a competing entity files a certificate of need application to establish a new hospital or dialysis facility in the same rural subarea.

Kaiser Permanente Hawai'i OPPOSES HB2502

HB2502 would reduce competition and tend to promote monopolies, thereby increasing costs and making healthcare less affordable for Hawai'i residents.

HB2502 seeks to circumvent and carve out a new process to limit competition. It would allow existing health care facilities to leverage their dominance in a specific rural area. Moreover, granting existing hospitals and dialysis facilities in rural communities with the right of first refusal to internally expand their facilities will not solve staffing shortages that the preamble language promotes. In stark contrast, promoting more competition will promote more job opportunity, especially in rural areas.

The state's Certificate of Need ("CON") program, which is administered by the State Health Planning and Development Agency ("SHPDA"), requires a health care facility to seek SHPDA's approval based on a set of criteria and community need. Once a health facility has applied for state approval, the SHPDA may approve, deny or set certain limitations on a health care project. HB2502 would reduce access to essential health care services by discouraging other providers from engaging in the expensive market research needed to support a CON, knowing that a competitor would be entitled to usurp the benefit of their efforts.

Given that HB2502 will adversely impact the people of Hawai'i by increasing cost while also reducing access, we request the committee **HOLD HB2502.**

Thank you for the opportunity to provide testimony on this important measure.

State of Hawaii House of Representatives
Committee on Health

LATE

HB 2502 Relating to Health

TESTIMONY IN SUPPORT (AMENDED)

LATE

TESTIFIER: Maria Garcia, Senior Director of State Government Affairs, Liberty
Dialysis/FMC

DATE: Wednesday, January 30, 2020

TIME: 9:00 am

PLACE: Conference Room 329

Good morning Chair Mizuno and members of the Hawaii State House Committee on Health:

My name is Maria Garcia and I am the Senior Director for State Government Affairs for Liberty Dialysis-Hawaii, a Fresenius organization. Thank you for allowing me to provide testimony IN STRONG SUPPORT of HB2502 related to Health and addressing the concerns of our chronic healthcare workforce shortage in the State of Hawaii.

Let me start by stating that we are pro-development in accordance to meeting the healthcare needs of communities and we fully support the Certificate of Need (CON) process. However, because of the severe shortage of healthcare workers and nephrologists, we find it necessary to address policy changes in the CON to specifically address workforce shortages especially in the rural areas of the state.

Liberty Dialysis-Hawaii, with its 27 statewide clinics, 675 employees and 2,500 patients and their families, works tenaciously everyday to be a provider of sustainable, high-quality dialysis care. This legislation addresses a series of critical challenges facing our rural clinics. With a growing chronic kidney disease (CKD) population in Hawaii, the need to provide life-sustaining treatment for End Stage Renal disease (ESRD) patients is also on the rise.

However, the number of existing and new patients does not correspond in proportion to the rate of required healthcare workers currently employed and entering the workforce. While Liberty Dialysis-Hawaii enjoys a 90% employee retention rate, according to the Healthcare Association of Hawaii, there is a shortage of 2,200 healthcare workers across our state in various disciplines. With rural areas being hit the hardest with this crisis, and some of our clinics intermittently mandating 16-hour work schedules to continue treating patients, we are at a tipping point.

Allowing "smart-development", through provisions in the CON process that allows for a first right of refusal from existing clinics, does not restrict new development nor does it prevent patients access to care. What it does do, however, is allow for existing clinics to appropriately scale-up services that addresses the needs of the community while not causing undue hardship to existing patients and services.

As part of this process, if the existing provider is unable or unwilling to expand services to meet the community's needs, a new developer will be encouraged to move their project forward. In the end, it's all about meeting the needs of the communities, the patients and employees and healthcare providers who care for them.

While the current CON process lightly touches upon the issue of impact to the existing healthcare system of the areas, it does not specifically as a category, cover the topic of workforce shortages. The following are the six criteria the State Health Planning Department Agency uses for CON applications:

- The relationship of the proposal to the Health Services and Facilities Plan.
- Need for and accessibility of the proposal.
- Quality of the service or care that is proposed
- Cost and financial impact of the proposal
- Relationship of the proposal to the existing health care system
- The availability of resources for the proposed service.

As you can see workforce shortage is not an independent category that addresses the severity of this issue.

In 2002, St. Francis Healthcare system had 2 hospitals and was considered by the Centers for Medicare and Medicaid Services (CMS) to be the largest dialysis acute care system in the nation. To that point, then Administrator of CMS, Tom Scully, stated to the St. Francis Sisters of Syracuse, "I don't know how you have been able to survive for so long" As we know, 4 years later, the sisters reorganized their system by selling their dialysis facilities and hospitals because it was no longer sustainable.

The reason I mention this, is because of the consequential impact of this issue. If we are not able to provide a high quality of care to our patients, they may end up in one of our hospitals. If that happens, then these patients have an average length of stay anywhere from 3-7 days. Each day a dialysis patient is in the hospital, not only is a bed occupied, but the hospital sustains a loss because of reimbursement issues. So, this issue not just impacts our clinics on the front-end but also the hospital systems as well.

In closing, I reiterate our position, that we support development to address the growing healthcare needs in communities... this legislation addresses this because it puts forth a "first right of refusal" which, which as a matter of course, will meet the community's needs concerning access to care. Secondly, we support the CON process as it is a needed function to ensure a system is in place to manage Hawaii's overall healthcare system and the impact development, or lack thereof, affects our communities. However, because of the severity of the shortages in our healthcare workforce, we need to more closely scrutinize this issue and the impact new healthcare development has on our existing healthcare providers and the healthcare system within this state.

The net result, of which, is to ensure a sustainable and robust healthcare network in our state for years to come. Thank you again for allowing me to share our perspective in support of this legislation.